

# Coversheet: Impact statement - A new planning process for freshwater

Advising agencies	<i>Ministry for the Environment</i>
Decision sought	<i>Amendment of the Resource Management Act 1991 (RMA) to introduce a new planning process for freshwater.</i>
Proposing Minister	<i>Minister for the Environment.</i>

## Summary: Problem and Proposed Approach

<p><b>Problem Definition</b></p> <p><b>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</b></p>
<p>Freshwater quality in New Zealand continues to decline. The options available to deliver the National Policy Statement for Freshwater Management (NPS-FM) under the current regulatory system will not produce outcomes fast enough.</p>

<p><b>Proposed Approach</b></p> <p><b>How will Government intervention work to bring about the desired change? How is this the best option?</b></p>
<p>A new, faster process for planning for freshwater under the Resource Management Act 1991 (RMA) is proposed. A central panel of suitably experienced freshwater hearing commissioners will be established to convene local panels to hear and make recommendations on freshwater plan changes. This is the best option as it assists councils to implement the NPS-FM by 2025 without unreasonable additional cost and enables robust and high-quality decision-making. It also enables decisions to be made at the appropriate level, retains opportunities for meaningful public participation, and enables compliance with Treaty settlements and other agreements that provide for tangata whenua involvement in RMA plan-making.</p>

## Section B: Summary Impacts: Benefits and costs

<p><b>Who are the main expected beneficiaries and what is the nature of the expected benefit?</b></p>
<p>The key benefit from the proposal is that NPS-FM outcomes will be achieved faster, leading to environmental benefits, namely improved water quality.</p>

<p><b>Where do the costs fall?</b></p>
<p>Key costs fall on local government. There may also be administrative and implementation costs for central government, through their role in supporting councils in achieving the 2023 and 2025 deadlines, and the secretariat for the freshwater commissioners.</p>

**What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?**

The key risks of the proposal relate to implementation. Due to the complexity of freshwater planning, there is a risk that there may not be enough time for councils to develop plan changes and notify these to a sufficient quality before 2023.

The Ministry for the Environment (MfE) aims to mitigate this risk by providing implementation support to councils, and the freshwater commissioners through a secretariat. This could include guidance on the scope of the plan changes required to achieve notification by 2023 and implementation by 2025.

Another key risk of the proposal is the lack of consultation that has been undertaken with iwi and resource users.

**Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.**

MfE has not identified any inconsistency with the Government’s “Expectations for the design of regulatory systems”.

## Section C: Evidence certainty and quality assurance

**Agency rating of evidence certainty?**

Evidence that has been used to develop the policy includes the National Monitoring System (NMS) data, and a review of all councils’ progressive implementation proposals required by the NPS-FM. Both of these sources give a good indication of the nature of freshwater planning and the problems with this, particularly the likelihood that many councils will not have plan changes in place to give effect to the NPS-FM by 2025.

However, there has been no public consultation on the policy and no wide consultation with iwi, although informal discussions have taken place with Kahui Wai Māori, Iwi Leaders’ Group and planning practitioners from all regional councils. This means there is lower certainty of evidence to support assumptions about how significant the costs and benefits of different approaches will be for different groups.

**Quality Assurance Reviewing Agency:**

Ministry for the Environment.

**Quality Assurance Assessment:**

Partially meets the quality assessment criteria.

**Reviewer Comments and Recommendations:**

- The RIS is clearly presented and is concise in explaining the problem associated with the plan-making process, and in setting out options to improve the system. The analysis of the options is sound, but falls short of fulfilling all of the RIS criteria due to the lack of consultation with some affected groups as discussed below.
- There is a recognised need for urgent action for the implementation of the freshwater policy statement. In considering options for improving the process for plan-making,

consultation has been undertaken with central government agencies and local government, including regional councils. Government advisory groups on freshwater reform, such as Kahui Wai Māori, were engaged with on the proposal. Kahui Wai Māori includes members with experience in the primary sector and agribusiness, freshwater science and mātauranga Māori, local government, resource management law and policy, and whānau and hapū advocacy. However, there has not been formal consultation ahead of Cabinet decisions with tangata whenua (iwi and hapū themselves), primary producers, key environmental NGOs or RMA practitioners in general.

- A similar hearings based process was instituted for the Auckland Unitary Plan and the Streamlined Plan Process, however it is not a default setting and proposals could have been consulted on. Given the significance of water, especially to tangata whenua and primary users, this limited consultation is considered to be significant. While there is an opportunity for these groups to engage through the select committee process for the RM amendment bill, this is not on its own considered sufficient to cover the approach to consultation prior to Cabinet decisions.
- However, we note that two significant consultation processes are proposed to address the lack of consultation. From 1 July through to mid-August there is targeted consultation planned on the comprehensive review of the RMA, which will include discussion of the freshwater planning process. In addition, the Essential Freshwater programme will run from August to October and include wide ranging public consultation, as well as targeted hui with iwi/hapū and primary sector groups and will include a detailed description of these specific proposals. The feedback from these consultations will be collated by MfE and passed on to the Select Committee.
- Subject to consultation on this proposal being sufficiently captured through these processes the panel is satisfied that the RIS partially meets the RIS criteria.

# Impact Statement: A new planning process for freshwater

## Section 1: General information

### Purpose

MfE is solely responsible for the analysis and advice set out in this Regulatory Impact Statement (RIS), except as otherwise indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet in relation to a proposed package of amendments to resource management legislation.

### Key Limitations or Constraints on Analysis

There is an implicit role of making value judgements in a resource management system. The current Government considers that some key principles must be adhered to in any reform of the resource management system. These include upholding Part 2 of the RMA, providing for local decision-making and meaningful participation, and achieving good environmental outcomes.

Cabinet has confirmed the Cabinet Environment, Energy and Climate Committee's work programme. This includes considerably improving the effectiveness of the resource management system [CAB-MIN-18-0246].

In 2018, Cabinet agreed to the scope of a narrow bill to amend the RMA, which reduces complexity, increases certainty, and ensures that public participation is enabled where appropriate in resource consent processes. The Minister for the Environment has noted that a more comprehensive reform of the resource management and planning system will be needed to address wider issues.

However, in advance of this comprehensive reform, the Government is committed to improving New Zealand's freshwater quality by stopping further degradation and loss, and reversing past damage. Key to achieving freshwater goals is the National Policy Statement for Freshwater Management (NPS-FM). The Government intends to consult on a new NPS-FM later this year, to come into force by mid-2020. In the meantime, councils are required to fully implement the NPS-FM by 2025 or 2030 if there are particular circumstances. It is likely that many councils will not meet the 2025 timeframe, and these delays are viewed as unacceptable by the current Government. Legislative change is required to address key problems with existing statutory process for plan-making under the RMA, to achieve the more acceptable timeframe of 2025.

An indicative quantification of costs has been undertaken using data obtained from councils through MfE's National Monitoring System (NMS). Evidence has also been obtained through councils' progressive implementation programmes as part of the NPS-FM implementation. However, wide consultation with the public and iwi has not been undertaken, resulting in lower levels of evidence to support assumptions about how significant the costs and benefits of different approaches will be for different groups.

The actual impact of the proposals will be better understood following public input through the Select Committee process. Future monitoring will also be undertaken to evaluate the implementation of the proposals.

**Responsible Manager (signature and date):**

Robert McClean

RMA Practice Team

Natural and Built Systems

Ministry for the Environment



19/06/2019

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

#### Context of this regulatory impact statement

This Regulatory Impact Statement (RIS) is the third in the package for the proposed Resource Management Amendment Bill (the Bill) to be progressed in 2019. The other two RISs are the original RIS for the Bill, and the RIS for enabling the EPA to take enforcement action under the RMA, clarification for alternate Environment Judge appointments, and providing legal protection for special advisors. The original RIS provides the majority of the analysis for the proposals in the Bill, which can be found on the MfE website.<sup>1</sup>

The original RIS details the primary problems the Bill seeks to address, which include that some RMA tools and processes create complexity and uncertainty, and opportunities for public participation are limited.

This RIS proposes a new process under the RMA for regional plans and policy statement changes for freshwater. Because the nature of this problem is different to those contained in the first two RISs, largely due to the complexity, scale and urgency, different objectives have been applied in this RIS.

#### Freshwater resources are important for ecosystems, human health and our culture

The condition of our lakes, rivers, streams, wetlands, and groundwater is important. For tangata whenua, freshwater is a taonga and is intrinsically connected to life and identity. Freshwater is a cornerstone of how our environment and its ecosystems operate. Our waterways support many indigenous animals, plants, and ecosystems, which are important for our health, and provide us with food to eat.

The views of communities about their interests and values around freshwater will vary around New Zealand, but the Land and Water Forum (LAWF) report demonstrates a common concern.<sup>2</sup> Environmental Attitudes research undertaken in September 2018 also showed that 82 per cent of New Zealanders feel that it is very or extremely important to improve the quality of our water.<sup>3</sup>

Our economy also depends on having plentiful water – agriculture, tourism, and hydroelectricity generation particularly rely on water. The values associated with commercial and non-commercial water uses are high.<sup>4</sup> The costs on human ecological health if our water is degraded is high, as is the cost of cleaning up water once it is degraded.<sup>5</sup>

<sup>1</sup> <http://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/regulatory-impact-statements/impact>

<sup>2</sup> Refer to May 2018 Land and Water Forum report at <http://www.landandwater.org.nz/>.

<sup>3</sup> <http://www.mfe.govt.nz/more/science-and-data/understanding-new-zealanders%E2%80%99-attitudes-environment>

<sup>4</sup> NZIER (2011) *The economic impact of increased irrigation*, demonstrated the value of commercial use in a study of fourteen planned irrigation schemes, covering 347,000 hectares predominantly in the Hawke's Bay and Canterbury, which were estimated to have an economic value of 0.8% of GDP by 2035 and a present value over 25 years of \$8b.

<sup>5</sup> For example, as noted in Ministry for the Environment (2011) *Regulatory Impact Statement – National Policy Statement for Freshwater Management* a cost of \$450m has been allocated to the clean-up of Lake Taupo, the Rotorua Lakes and the Waikato River over the next 10 to 20 years.

## **Freshwater quality and quantity are not being managed well**

The intent of the RMA was to ensure freshwater quality and quantity were appropriately and sustainably managed. However, monitoring and reporting, most recently through Environment Aotearoa 2019,<sup>6</sup> has indicated that the overall state of our freshwater is unsatisfactory and the quality of freshwater in some areas is in decline. Our lakes and rivers are feeling the pressure of growing population and changes in the way we use land, both in rural and urban areas. Our native plants, animals, and ecosystems are under threat. Changes to the vegetation on our land are also degrading the soil and water, and freshwater quality is particularly under pressure in lowland river sites.

It can sometimes take decades, or even longer, for water (and any contaminants it contains) to cycle from the earth's surface through the ground to aquifers, and back to surface-water systems. This means some effects we see today are legacies of past activities, and the impact of our activities today, both positive and negative, may not be seen in our waters for decades.<sup>7</sup>

Scarcity is also becoming a serious issue in many places depending on seasonal and climatic variations. Many catchments are over-allocated, and others are fully, or approaching full allocation. Over-allocation is proving difficult to prevent or reverse although some regions have plans in place to manage it. Changes in weather patterns may worsen conditions in drought-prone regions and increase stresses for storm water management in wet regions.

Water management issues vary greatly around New Zealand, and over time. Natural factors such as climate, geology, and topography, determine how human pressures affect the state of water bodies. This means that water in different catchments responds to pressures in different ways, so we need to consider the specific context for each water body. For example, the Canterbury region has multiple catchments, high pressure on the resource and legacy issues to resolve. The Waikato region, by contrast, has one major river under high management pressure, and has a statutory co-management arrangement with Waikato Tainui. Some other regions, such as Northland and Gisborne, have small rating bases and capacity challenges for water management. These variations mean there is no “one size fits all” formulation of problems and solutions.

## **The Government is committed to an improvement in water quality**

The Government is committed to delivering an improvement in our water quality within five years. Cabinet has committed to restore New Zealand's Freshwater and Waterways [CAB-18-MIN-0296], and is progressing a freshwater work programme.<sup>8</sup> This work programme is set out in the October 2018 document “Essential Freshwater: Healthy water, Fairly Allocated”.<sup>9</sup> This provides the Government's plan to restore and protect freshwater in New Zealand. In conjunction with this, the Government has acknowledged that water quality

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<sup>6</sup> <https://www.mfe.govt.nz/publications/environmental-reporting/environment-aotearoa-2019>

<sup>7</sup> <https://www.mfe.govt.nz/publications/environmental-reporting/environment-aotearoa-2019>

<sup>8</sup> <http://www.mfe.govt.nz/fresh-water/fresh-water-and-government/freshwater-work-programme>

<sup>9</sup> <http://www.mfe.govt.nz/node/24402/>



cannot be addressed without a concurrent and substantive discussion with Māori. The document “Shared Interests in Freshwater”<sup>10</sup> sets out a new approach to the Māori/Crown relationship for freshwater. Kahui Wai Māori – the Māori Freshwater Forum has been established to broaden the conversation with Māori on freshwater.

### **Treaty settlements are increasingly influencing the management of freshwater**

For Māori, freshwater is a taonga, and this is reflected through the increasing number of Treaty settlements which are influencing the management of freshwater. This can be in the form of Joint Management Arrangements (JMAs), or other innovative approaches to freshwater management, such as the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, which confers a legal personality on the Whanganui River.

### **Comprehensive reform of the resource management system is proposed**

A complex range of factors are influencing the continued loss of freshwater quality, quantity and ecosystem health in New Zealand. At a strategic level, these will be addressed through MfE’s freshwater programme. A comprehensive review of the resource management system has also been signalled by the Government. However, both delivery of that review, and implementation of that resource management system will take time. Freshwater quantity, quality and ecosystem health needs to be better managed now. MfE considers that we need to enable improvements in freshwater quantity, quality and ecosystem health throughout the country’s freshwater systems in the short term. Timely implementation of freshwater policy is required, which is currently impeded by Schedule 1 plan-making processes under the RMA.

## **2.2 What regulatory system, or systems, are already in place?**

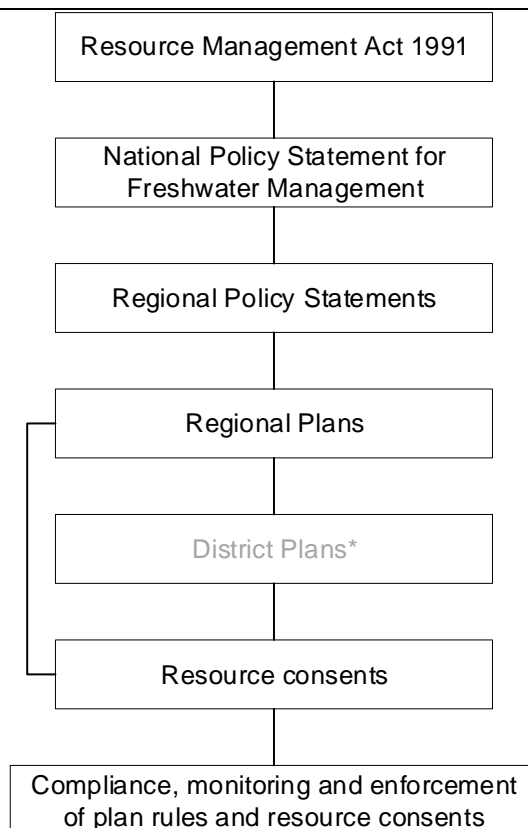
### **The RMA and the National Policy Statement for Freshwater Management regulate freshwater**

The RMA is New Zealand’s primary environmental statute, covering environmental protection, natural resource management and our urban planning regime.

The primary purpose of the RMA is to promote the sustainable management of New Zealand’s natural and physical resources. Most of the every-day decision-making under the RMA is devolved to city, district, regional and unitary councils, which means decisions are made by the community most affected by the proposal. Local government regulates activities that may adversely affect freshwater through regional plans, and central government regulates activities through national direction tools. National policy statements are a national direction tool, which are issued under section 52(2) of the RMA. The NPS-FM is the key tool for freshwater management in New Zealand. This current hierarchy for freshwater management under the RMA is outlined below in Figure 1:

<sup>10</sup> <http://www.mfe.govt.nz/publications/fresh-water/shared-interests-freshwater-new-approach-crownm%C4%81ori-relationship-freshwater>





\*District councils do not have functions under the Act directly relating to freshwater management, however land use management, which they are responsible for, can impact on freshwater.

Figure 1: Hierarchy for freshwater management under the RMA

The NPS-FM sets out the objectives and policies for freshwater management, applying a framework that considers and recognises Te Mana o te Wai<sup>11</sup> as an integral part of freshwater management.<sup>12</sup> Appendix 1 identifies how this work is to be undertaken. The NPS-FM became operative in 2011 and was subsequently amended in 2014 and 2017. Its implementation will promote restoration activity to bring freshwater resources, waterways and ecosystems to a healthy state within a generation. These provisions are delivered through regional policy statements and regional/unitary plans using RMA Schedule 1 processes. The NPS-FM must be implemented no later than 31 December 2025. However, if councils consider this would be impractical or would result in lower quality planning, they may extend their implementation programme to 31 December 2030. Where councils are unable to implement the NPS-FM by the end of 2025, they are required to identify a programme of implementation, and to report annually on their progress.

### The broader freshwater management system

In addition to these regulatory RMA tools, there are a range of other initiatives at both central and local government level that aim to improve the quality of our freshwater. For example, at the national level this includes the Essential Freshwater package, and other tools, such as

<sup>11</sup> Te Mana o te Wai is the concept of the integrated and holistic well-being of the water. It is up to communities and councils to consider and recognise Te Mana o te Wai in their regions.

<sup>12</sup> <https://www.mfe.govt.nz/fresh-water/national-policy-statement/about-nps>

the Freshwater Improvement Fund, the Te Mana o te Wai Fund, and the partnership for good farming practice.

The Government committed to addressing freshwater issues in 2018, and established the Essential Freshwater work programme with the objectives of:

- stopping further degradation and loss – a series of actions now to stop the degradation of freshwater and make improvements within five years
- reversing past damage to bring freshwater resources to a healthy state within a generation.

As part of the Essential Freshwater programme the Government is making expectations clearer and providing direction to inform decision-making through new regulation and updated legislation. Action is required in a number of areas, including:

- rapidly moving to restrict or stop some activities that are causing pollution and damaging ecosystem health
- supporting iwi/hapū, landowners and communities to make changes to improve their local waterways through whole-of-government investment in building skills and knowledge and funding planting and restoration activities
- strengthening and speeding up regional decision-making and management to better protect and restore all aspects of ecosystem health
- ongoing work to develop an enduring, fair and efficient system for managing and allocating water in the future.

The Government is also currently reforming the regulation, delivery and funding of the three waters system (drinking water, wastewater and stormwater). The Three Waters Programme is proceeding in tandem to the Essential Freshwater work programme, and together they are designed to create a balanced system to better manage urban and rural water issues.

### **There are a wide range of agencies that play a role in the management of freshwater**

There are a wide variety of other groups that have an active role or substantive interest in the existing system, and any proposed changed system. They include:

- other central government agencies, particularly those contributing to the cross-government Water Taskforce<sup>13</sup>
- tangata whenua
- those helping provide Te Ao Māori perspectives on freshwater management through Kahui Wai Māori, and Freshwater Leaders Group
- local government, including all regional councils who deliver the NPS-FM by amending their planning documents to implement the outcomes required
- all primary producers that rely on freshwater, who may be represented by organisations such as Horticulture New Zealand, New Zealand Dairy, and Federated Farmers New Zealand
- all cross-governmental and affected groups such as the Inter-government Freshwater Taskforce, Kahui Wai Māori, Freshwater Leaders Group, Science and Technical

<sup>13</sup> <http://www.mfe.govt.nz/fresh-water/cross-government-water-taskforce>

#### Advisory Group

- non-governmental organisations such as Forest and Bird, Fish and Game and the Environmental Defence Society.

#### **Fitness-for-purpose of the regulatory system**

MfE regularly assesses the fitness-for-purpose of the resource management system as part of our regulatory stewardship role.<sup>14</sup> The effectiveness of the system is also currently being assessed and addressed through a Resource Management System reform programme. That work will not be completed for some years.

In the interim, the effectiveness of the existing regulatory regime in managing freshwater has been assessed through a 2018 review undertaken by MfE of the 16 regional and unitary councils' progress of the implementation of the NPS-FM.<sup>15</sup> The review identified that there are systemic barriers to the timely implementation of the NPS-FM created by the RMA Schedule 1 processes, such as the expectations around consultation and the scope for appeals to prolong plan-making processes. The current plan-making system is making implementation of the NPS-FM take longer than is optimal for the environmental outcomes expected.

### **2.3 What is the policy problem or opportunity?**

#### **Overarching Problem – freshwater quality in New Zealand continues to decline, and the options available under current system will not deliver required outcomes quickly**

The overarching problem this proposal will contribute to solving is the continued decline of freshwater quality in New Zealand. There is a large body of evidence to support this problem, as referred to above. The long-term policy objective is to ensure there is no further decline, and where possible, improve freshwater quality, quantity, and ecosystem health. However, this is a systemic issue that cannot be addressed through one action alone, and requires both regulatory and non-regulatory intervention.

There is a broader package of work being undertaken relating to freshwater management, and a comprehensive review of the resource management system has also been signalled by the Government. However, these processes will both take time, and in the meantime freshwater will continue to degrade. The nature of the freshwater issues is that it can be more costly to reverse damage, than to prevent it. The scale and urgency of this issue, and the difficulties councils face with implementing the NPS-FM in a timely way, therefore justify utilising the Bill as a legislative vehicle to provide improved processes.

While guidance and private arrangements are likely to improve freshwater outcomes in some areas, and provide the long-term social and economic drivers to improve freshwater, they will not be sufficient to deliver improved freshwater quality and ecosystems health throughout the country in the short term. Timely implementation of regulation is also required, which is currently impeded by Schedule 1 plan-making processes under the RMA.

<sup>14</sup> <http://www.mfe.govt.nz/publications/rma/our-regulatory-stewardship-strategy-2018>

<sup>15</sup> Councils are required to report annually on their progress in implementing the NPS-FM.

**Specific policy problem – the NPS-FM is not being implemented fast enough and the proposed amendment is required now due to the scale and urgency of the issue**

The NPS-FM is not being implemented fast enough by councils because:

- the planning processes under the RMA are not fit for purpose for freshwater management
- there are political challenges at the local government level
- freshwater planning is technical and complex.

As noted, the NPS-FM is delivered through RMA regional planning documents. The NPS-FM requires:

- regional councils to account for all freshwater takes and contaminants, which provides the information needed for setting and managing freshwater objectives and limits
- regional councils to set freshwater objectives, and provides a process for doing this.

The NPS-FM must be fully implemented by 31 December 2025, unless the council determines and reports back that this is impracticable, or will result in poor quality planning. In this situation they have yearly reporting and monitoring to MfE to ensure delivery by 2030. The 2025 timeframe is preferred, as it will mean progress on freshwater management is made more quickly, and it was anticipated that the majority of councils would implement within this timeframe.

Seven of 16 councils expect to fully implement the NPS-FM by the 2025 deadline. However, MfE considers only one of these council seems well-placed for full implementation by 2025, as there is a high potential for delay for the six remaining councils. Nine councils are not confident that they will be able to fully implement the NPS-FM by 2025, and therefore would likely (or have decided to) extend their timeframe to 2030.<sup>16</sup>

There are opportunity costs associated with this delay, including foregone benefits from investment, and delays to environmental improvements. Delays also give rise to ‘policy lag’ where by a problem originally sought to be addressed has significantly changed by the time a regional plan becomes operative.

The key problems that have been raised by regional councils that contribute to this lack of timely implementation include:

The planning processes under the RMA are not fit for purpose for freshwater management

- The current RMA Schedule 1 process<sup>17</sup> is expensive and time consuming for freshwater. This is particularly because there is a high level community interest, competing demands on freshwater, and there are broad rights of appeal in this

<sup>16</sup> <https://www.mfe.govt.nz/fresh-water/national-policy-statement/regional-councils-implementation-programmes>

<sup>17</sup> The standard RMA Part 1, Schedule 1 process includes a number of steps, such as limited or public notification, written submissions, further submissions, a hearing, and then rights of appeal to any person who submitted on the plan or plan change.

process. NMS data demonstrates that freshwater plan changes receive more submissions, have longer hearing times, take longer for decisions to be issued, and are more likely to be appealed.<sup>18</sup> The broad appeal rights mean that plans can take many years to become fully operative.<sup>19</sup> Even though setting freshwater objectives and limits is underpinned by science, it still remains a value judgement, which can be open to legal challenges. These processes are therefore costly, with plan changes to implement the NPS-FM costing about 40 cents of every dollar spent by regional councils on plan changes since mid-2014.<sup>20</sup> Regional council chief executives have therefore requested a more agile planning process in order to address these issues.

- The Collaborative Planning Process (CPP) is another planning process under the RMA that councils can use to change their plans.<sup>21</sup> The CPP was introduced in 2017 and was intended to provide a process for difficult decisions about complex planning issues where different values are at play. The original policy intent was that this could be used to facilitate front-end engagement rather than resolving issues via appeals to the Environment Court. However, feedback from local authorities has indicated that the process is not being used, and is unlikely to be used in the future. This is largely because it is viewed as too onerous, prone to legal risks and overall advantages are not guaranteed. Councils have told us that they do not intend to use it as it is overly prescriptive and constraining, but that they may still use the option of collaboration in a non-statutory way. Some councils have invested significantly in collaborative processes to implement the NPS-FM. For example, the TANK process in the Hawkes Bay, and the Healthy Rivers plan change in the Waikato. It is noted that these collaborative processes have not used the CPP enabled under the RMA.
- The Streamlined Planning Process (SPP) also provides a useful option for councils to request that the Minister for the Environment directs a streamlined planning process which removes appeals in most instances. However, it is at the discretion of council to request SPP, and each process is assessed and tailored on a case-by-case basis. Despite being available since 2017, regional and unitary councils have not used SPP to implement the NPS-FM.

#### There are political challenges at the local government level

- As well as these issues with the statutory processes under the RMA to change plans, there are also political issues at the local government level. Changing plans to reflect the NPS requires conversations to be had about values, which can be challenging. A lack of certainty around the scientific side of water management can also be an additional barrier to local politicians making hard decisions. Local Government New Zealand (LGNZ) has also noted the disincentive to invest in complex plans when the timeframes span multiple council elections, with institutional knowledge of councillors and council staff likely to be lost over the life of the process.

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<sup>18</sup> <https://www.mfe.govt.nz/rma/rma-monitoring>

<sup>19</sup> Although proposed rules that protect or relate to water have legal effect from notification, these can be changed through the planning process and only become fully operative at the end of the process.

<sup>20</sup> This figure is based on NMS data and is indicative only. Councils do not always report on their costs in the NMS, however it is clear from the data that plan changes related to freshwater are more expensive compared to others.

<sup>21</sup> <https://www.mfe.govt.nz/sites/default/files/media/fact-sheet-6-a-new-optional-collaborative-planning-process.pdf>

### Freshwater planning is technical and complex

- Making competent freshwater plans is highly technical and complex. It requires a large amount of information and sophisticated decision-making tools. People making decisions need to have specialist RMA, legal, tikanga Māori and scientific/technical skills. There are a limited pool of people in New Zealand that have this mix of skills, and they will be in high demand as all councils with regional functions need to undertake plan changes to implement the NPS-FM. Freshwater also requires adaptive management, as good science, reliability of information and best practices change over time. The RMA requires a review of plan provisions every 10 years and to date councils have largely undertaken changes required through a series of catchment or topic-based rolling reviews.

## **2.4 Are there any constraints on the scope for decision-making?**

### **Constraints on Scope**

A wider, comprehensive analysis of the system and the problems associated with it has not been undertaken as part of this policy proposal. The Government has signalled a longer term, more comprehensive review of the resource management system that builds on the current programme of work for freshwater and other priorities. The Government is also committed to another programme of work relating to freshwater management, through the Essential Freshwater package as noted previously.<sup>22</sup> Kahui Wai Māori, the Freshwater Leaders Group, the Inter-government Freshwater Taskforce, and Science and Technical Advisory Group have been formed to help deliver this programme.

The timeframes in the NPS-FM itself are also a constraint on the scope of the policy. Because the policy is aimed at ensuring the implementation of the NPS-FM by the preferred 2025 deadline, the required amendments need to be in place to enable sufficient time from notification to decision of plans (2 years currently under the RMA). This time constraint has influenced the policy work, including no public consultation on the proposal prior to the Select Committee process, and the focus on statutory processes in order to ensure the preferred 2025 timeframe is met. The changes are aimed at delivering the NPS-FM in a timely manner before adverse effects on freshwater quality, quantity and ecosystem health become more difficult and costly to remedy.

This amendment is therefore an interim stage of reform, specifically aimed to assist delivery of the NPS-FM, while the broader work on managing freshwater and the comprehensive review of the resource management system reform progresses. This interim proposal will not limit the outputs or affect any consequential implementation of recommendations of those other more comprehensive processes.

There are also various Treaty settlements which influence freshwater management, as noted earlier. The intent is for existing Treaty settlements and agreements which provide for co-development through pre-notification plan development, and decision-making on the plan to be complied with.

<sup>22</sup> <http://www.mfe.govt.nz/sites/default/files/media/Fresh%20water/essential-freshwater.pdf>



## 2.5 What do stakeholders think?

This legislative amendment proposes to mandate a separate RMA planning process for changes to regional policy statements and regional plans relating to freshwater. Full public consultation has not been undertaken, and wide consultation with iwi has also not occurred. This is considered a key risk of the proposal.

Key groups that are likely to be interested in this proposal are:

1. **other central government agencies such as Ministry of Primary Industries, Department of Conservation, Ministry of Business, Innovation and Employment and Ministry of Justice.** They are interested in how this proposal may create both opportunities for and impediments to primary production and the New Zealand economy; and how environmental quality is supported. Initial feedback from some of these agencies identified the need to be clear about the practicality of delivering to timelines, to understand the impact if action is not taken over the next 5 years, and costs and practicality of implementation. They also questioned how the proposal fits with the comprehensive review of the resource management system, work being completed by Kahui Wai Māori, and links to other domain areas including National Direction. There were some concerns that the process may detract from local government making progress on other central government priorities. The Ministry of Justice also raised concerns that, on principle, appeal rights should not be reduced to incentivise councils' acceptance of panel recommendations. They were also concerned that this may make council decisions vulnerable to judicial review. These matters will be explored through Sections 3, 4 and 5.2 of this RIS.
2. **all tangata whenua** have a special interest in and relationship with freshwater. The comprehensive review of the resource management system, and the Essential Freshwater programme will more comprehensively and consider tangata whenua perspectives.
3. **those helping provide Te Ao Māori perspectives on freshwater management through Kahui Wai Māori, and Freshwater Leaders Group.** Informal early discussions were held with Kahui Wai Māori and Iwi Leader's Group. Kahui Wai Māori expressed support for making councils deliver freshwater improvements faster and holding councils to greater account for implementing the NPS-FM. They were however concerns that the freshwater hearing panels will not have enough capacity in tikanga Māori. Some changes were made to the policy based on this discussion. The Iwi Leader's Group was also informed but did not express a view. Te Arawhiti also raised concerns about the lack of engagement and analysis of the impacts on Iwi and Treaty Settlements. The need for a Māori Engagement Strategy was also raised, and how this may undermine and cut across engagement and work with Kahui Wai Māori on both the comprehensive review of the resource management system and the Essential Freshwater programme.
4. **local government, including all regional councils,** who deliver the NPS-FM through amending their planning documents. Informal consultation occurred with planning practitioners from regional councils, where options for amending the process were outlined. Questions around implementation problems were asked, and feedback received. This feedback has informed the new freshwater planning process. Council



planning practitioners did raise concerns about implementation issues which could be resolved through non-statutory measures and support. They also raised concerns about the implications for existing plan review programmes. Regional council chief executives supported the bold/ambitious process in principle, but expressed concern at the amount of work to bring notified plans together by 2023, both in terms of building a constituency of support and the burden of proof required to establish a plan. These matters will be explored through Sections 3, 4 and 5.2 of this RIS.

Territorial authorities may also be affected as water users or applicants, but no specific consultation has occurred with this sector of local government.

5. **all primary producers that rely on freshwater takes or discharges** are affected as businesses who rely on the provision of freshwater to undertake their activity. They may be represented by organisations such as Horticulture New Zealand, New Zealand Dairy, and Federated Farmers New Zealand. No consultation has been undertaken with this sector.
6. **all cross-governmental and other groups formed as part of the Freshwater Programme** such as the Freshwater Taskforce, Kahui Wai Māori, Freshwater Leaders Group, and Science and Technical Advisory Group will be interested in this proposal. These groups are working directly with the Freshwater Directorate of MfE, who initially proposed the process for legislative change. The directorate will ensure these groups fully understand this proposal, and how their work fits into the wider reform picture.
7. **non-governmental organisations such as Forest and Bird, Fish and Game, Environmental Defence Society** who have an interest in the environment and our freshwater quantity and quality have an interest in this proposal. They will be interested in opportunities for involvement in any plan development process. No consultation has been undertaken with this sector.
8. **other RMA practitioners** will be interested in the proposal, and how it will impact on their work. As noted previously, there are time limitations for this reform. This has led to constraints in time for the initial development of the proposals, and has constrained stakeholder engagement. With the exception of council planning practitioners mentioned above, consultation has not been undertaken with this sector.

There will be an opportunity for people to make submissions through the Select Committee process.

# Section 3: Options identification

## 3.1 What options are available to address the problem?

As discussed above, the key problem to be addressed in order to enable faster and improved implementation of the NPS-FM is the statutory planning processes under the RMA. Particular aspects of the process and approaches to each are outlined and analysed below. Three key practical options are then drawn on from these approaches and described and assessed accordingly.

The following objectives have been used to assess the approaches and options:

- the option assists councils to implement the NPS-FM by 2025 without unreasonable additional cost
- the option enables robust and high-quality decision-making
- the option enables decisions to be made at the appropriate level
- the option retains opportunities for meaningful public participation
- the option enables Treaty settlements and other tangata whenua agreements to be complied with.

In setting out options to achieve these objectives, there are three core elements that need to be decided. These are:

- scope and entry to the process
- decision-making and appeal rights
- iwi participation and Treaty settlements
- public participation.

MfE has analysed different alternatives for each of these elements and indicated a preferred alternative for each. At the end of the section, combinations of alternatives are used to form the three broad approaches MfE considers represent the most realistic options to achieve the objectives. The three options are then assessed against the objectives set out above.

### Scope and entry to the process

#### Proposed approach – mandatory new planning process for freshwater plan changes only

Key features of this proposed approach include:

- the process is mandatory for regional councils to use when amending, or creating new planning documents that relate to freshwater. This could include regional plans, policy statements, unitary plans, or combined regional and district plans
- there is a mandatory notification date of 31 December 2023 for regional councils to notify plan changes implementing the NPS-FM, and 31 December 2025 for a decision on these plan changes.

It is proposed that the process is restricted to policy statement or plan changes that relate to

freshwater, and would apply from the point of public notification of the change. Prior to this point, pre-notification consultation would be undertaken as currently set out under Schedule 1 of the RMA. It is intended that the process would include regional plan changes that relate directly to water quality and quantity, and also to the control of land use for the purpose of the maintenance and enhancement of water quality and quantity, recognising the impact the control of land use can have on freshwater management. Plan changes this would capture could include, for example, changes to regional plans to set limits on water use or discharges, such as nitrogen, or provisions to identify outstanding water bodies to ensure the protection of these.

Key risks of this approach include:

- councils may undertake a discrete planning process to give effect to instruments like the NPS-FM, or combine this with other matters, including for example other national direction instruments.<sup>23</sup> It may therefore be difficult from a practical or technical perspective to separate these out, due to the interconnected nature of freshwater issues
- it provides a mandatory process from the notification step, but not prior to this. This means that the proposal will not address any difficulties or problems councils may have in getting their plans to a stage where they are ready to be notified, which can be the most time-consuming aspect of the process (local government practitioners have noted that it can take up to five years). This may result in plans not being of a sufficient quality at the time when they enter the process, or trade-offs needing to be made between different aspects of the process to enable the plan to get to the notification stage, for example between quality/durability, community engagement, data collection and evaluation
- there may be a bottleneck at 2023, due to the mandatory notification date for regional councils, which could create resourcing issues for the freshwater commissioners, iwi and other parties involved in freshwater planning processes
- the new planning process will be additional to other work councils are currently undertaking, including implementing other national direction tools. There are three other pieces of national direction currently being developed that will require councils to give effect to within a similar timeframe. The national planning standards will also need to be implemented by councils. Council practitioners have indicated in consultation that this could mean councils have to deprioritise some work due to resource constraints. There may be a perception risk that that the NPS-FM is more important than other pieces of national direction on other issues.

Despite difficulties councils may face in separating out freshwater related plan changes, a clear requirement to use the process removes a perceived avenue for challenge over the choice of process and makes it more likely that the NPS-FM timeframes will be met, a key objective of the proposal. It is considered that requiring water related plan changes, which can include regional land use rules, is the most effective in terms of integrated management. Only requiring freshwater related plan changes to progress through the process will limit the impact of the proposal on other aspects of the resource management system, meaning that implementation should be more straightforward. There will also be greater consistency in decision-making regarding freshwater management throughout the country, through standardised procedures.

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<sup>23</sup> For example, of the 38 processes to change or vary plans involving the NPS-FM, only 13 listed the desire to achieve consistency with the NPS-FM as the only driving factor for the plan change. About a third incorporated direction from another national instrument as well.

MfE is planning to provide support and assistance to help councils produce quality planning documents prior to notification (before 31 December 2023). Councils are best-placed to run this pre-notification phase of the planning process, as they regularly engage their communities on policy issues. The scope of the plan changes required for 2023 is also not prescribed. Decisions can be made to ensure it only capture the essentials, for example setting limits on a region-wide basis, which will address some of the resourcing issues raised by local government. It is also anticipated that some of the freshwater hearing commissioners will meet regularly to schedule hearings and appoint freshwater commissioners to different hearing panels to ensure that this is workable.

NMS data shows that there are on average 20 NPS-FM related plan changes that councils reported working on per year since 2014/15, with approximately ten hearings per year. It is unclear how many changes councils will need to make to give effect to the NPS-FM by the preferred deadline of 2025, as some are amending their plans on a catchment by catchment basis, in separate plan changes, whereas others may make only one plan change or combine it with a full plan review. It is therefore difficult to estimate exactly how many plan changes will be captured by this new process, but it could be 10-20 per year. Councils reported spending a total of about \$11.4 million on plan changes involving the NPS-FM and \$29.4 million overall on plan changes since mid-2014, indicating that the NPS-FM consumes a significant portion (40%) of the total resources spent on all plan changes.<sup>24</sup>

It is also proposed as part of this change, that the Collaborative Planning Process (CPP) is removed from the RMA. Feedback from local authorities has indicated that the process is not being used, and is unlikely to be used in the future. This is largely because the process is viewed as too prescriptive, onerous, prone to legal risks and overall advantages are not guaranteed. Because of this, and the new proposal being introduced that will be mandatory for freshwater issues, it is viewed as appropriate to remove CPP from the RMA.

## **Alternative Approaches**

### **Optional new planning process for freshwater plan changes only**

An alternative approach is to make the process optional for regional councils to use for freshwater plan changes. However, it would not be as effective as the preferred option at achieving the objective of assisting councils to implement the NPS-FM timeframes. If the process is optional, regional councils could still use the usual planning process under Schedule 1, which, as noted, can be particularly lengthy and costly for plan changes related to the implementation of the NPS-FM. By making the process mandatory for regional freshwater plan changes, this will provide greater certainty of implementation of the NPS-FM.

### **Optional new planning process for a wider variety of plan changes**

Another alternative approach is to provide councils with a choice of when the process could be used. It could be optional, for example, for implementing any piece of national direction, or an issue the council considers particularly complex or contentious.

As noted, however, the particular objective that this proposal has is timely implementation of the NPS-FM. The scale and nature of the freshwater problem is such that an alternative planning process is warranted. More analysis would be required to determine which other resource

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<sup>24</sup> Note these figures are indicative only as councils do not report on all plan changes in the NMS, and when they do they do not always report on costs; however it is clear from the material that plan changes related to freshwater are expensive compared to other plan changes.

management issues the proposal may be appropriate for. There is also the SPP available under the RMA that some councils have requested for other resource management issues, which provides a more truncated planning process. However, given the timeframe for implementation is similar to other pieces of national direction being proposed, allowing the proposed process to be used for these issues could have the benefit of ensuring all of the current Government priorities are met in the timeframes allocated.

This widening in scope would however make the proposal less feasible. It is already anticipated that the pool of freshwater commissioners will need to schedule and hear approximately 10-20 freshwater plan changes a year initially, and cover a wide skill set between them. If further topic areas were available for consideration through this process this could increase the cost, and feasibility of enabling the timely implementation of the NPS-FM, given that resource would be diverted to these other topic areas.

It is considered that any wider changes to the planning process should be considered in a more integrated way, as part of the more comprehensive review of the resource management system.

### **No new planning process, but further implementation support and use of existing RMA tools**

Another alternative approach is to provide further implementation support and use existing tools under the RMA to strengthen implementation of the NPS-FM. This could include:

- use of section 24A investigation and recommendation powers, which enable the Minister for the Environment to investigate and make recommendations to a local authority about their performance of RMA functions
- use of section 25 which enables the Minister for the Environment to appoint one or more persons to exercise local authority RMA functions
- use of section 25A and 25B which enables the Minister for the Environment to direct local authorities to undertake a plan change or review
- use of section 142 'call-in' powers, which enables the Minister for the Environment to call in a matter as a proposal of national significance, to be decided by either the Environment Court or a Board of Inquiry
- use of Streamlined or Collaborative Planning Processes in Schedule 1.

We acknowledge the value of further implementation support. However, further support and use of existing processes above would not provide national oversight and scheduling of hearings, or a mandatory notification and decision date in the legislation. These alternatives will not sufficiently address the overarching problem that councils are struggling to implement the NPS-FM in a timely manner. On the other hand, the proposed approach would enable a more effective and co-ordinated approach to freshwater planning nationally, and provide a more fit-for-purpose process for freshwater, which recognises the litigious, complex and costly nature of freshwater planning.

## Decision-making and appeal rights

### Proposed approach – establish a national group of freshwater commissioners

The proposed option is for the Minister for the Environment to establish a national core group of freshwater commissioners, who co-ordinate and schedule freshwater plan changes throughout the country.

It is proposed that the national group of freshwater commissioners will be chaired by a current or retired Environment Judge. The group of freshwater commissioners will collectively have the following expertise:

- experience in judicial processes and cross examination
- expertise in relation to water quality and quantity, and freshwater ecology
- knowledge of the RMA
- understanding of tikanga Māori and mātauranga Māori.

Regional hearings panels would be established by this core group to hear and make recommendations on the individual plan changes to implement the NPS-FM and any other freshwater plan changes. The chair of this group will be responsible for convening regional hearings panels appointed for specific plan change panels. Panels will be made up of:

- two local elected representatives (or commissioners nominated by the council),
- one member with an understanding of tikanga Māori and mātauranga Māori (to be selected from nominations by local tangata whenua).
- two members from the pool of national freshwater commissioners (one of whom would chair the panel and have a casting vote).<sup>25</sup>

Hearing panels may also exceed five members, in order to accommodate particular circumstances unique to a region or locality.

A key role of the freshwater commissioners will be assisting councils to make changes to their plans to implement the NPS-FM by 2025. By establishing this group of freshwater commissioners there will be efficiency gains for councils, through a national body co-ordinating and scheduling hearings throughout the country. Administrative assistance will initially be provided by MfE, and consideration will be given as to whether the EPA could also play a role. The freshwater commissioners will also report to the Minister for the Environment on a regular basis.

The regional freshwater hearings panels will hear the plan change, and make recommendations to the council, with the council having the final decision-making role. This differs to the status quo, where councils currently run the entire planning process, and decide on freshwater plan changes. However, in reality, many large water-related plan changes have then been determined by the Environment Court, as they are heard de-novo on appeal.

The chair of each regional panel will be appointed from the group of freshwater commissioners, and will have a casting vote. All members appointed to the panels will need to be accredited through the Making Good Decisions Programme. The hearings panel will determine its own

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<sup>25</sup> All panel members will need to be accredited under s39A of the RMA (Making Good Decisions programme)



procedures, and, as well as normal hearings processes, the panel will have the ability to:

- direct conferences of experts
- direct conferencing of submitters
- facilitate pre-hearing meetings
- refer matters to mediation or other alternative dispute resolution processes
- permit cross examination
- commission reports to assist the panel and
- appoint special advisors to assist the panel.

These tools will contribute to the objective of robust decision-making.

In making its recommendations, the panel will be required to follow the usual RMA plan and policy statement decision-making requirements.

It is proposed that council officers will retain all their current responsibilities including issue of the planner's section 42A report. Councils will have to forward all the relevant information to the freshwater commissioners. Any 32AA reports required if the council rejects or changes aspects of the panel's recommendations will also be produced by council.

The council will have the ability to accept or reject (either in whole or in part) the recommendations made by the hearings panel, and subsequent rights of appeal hinge on this decision. The council will be provided 20 working days to do so, or can apply to the Chair of the hearing panel for an extension if this is not possible. If the council accepts the recommendations of the hearing panel, then appeals will only be available to the High Court on a point of law. Subsequent appeals will be available to the Court of Appeal, but no further. If the council rejects the recommendations, appeals will be available to the Environment Court for the matters that are rejected. This is similar to the Auckland Unitary Plan process, which has proven effective. This is because proportionately more time and resources are usually spent in the appeals process for plan changes. While the Environment Court adds a degree of rigour and expertise to decision-making, appeals can mean plan changes face lengthy delays before being made fully operative.

The advantage of the option is that it provides a robust hearing process, with independent experts and additional process steps such as cross-examination and alternative disputes resolution. However, it still recognises the value of local decision-making and accountability by elected representatives, and still ensures the NPS-FM is implemented in a timely way.

Key risks of the proposal include:

- the plan, or part of the plan change could be appealed if council rejects or amends the panel recommendations, and could delay implementation of the NPS-FM
- there may also be increased up-front costs to councils, through the use of different decision makers, and a more stringent first-instance hearing process, such as including cross-examination
- another risk is that there may a potential shortage of decision-makers with the



appropriate skills and expertise. Due to the skill set required, and the potential number of hearings between 2023-2025, there may be a shortage of commissioners with the appropriate technical or cultural expertise. There may also be an impact on Environment Court resources, given that judicial experience may be needed for the pool of Commissioners.

However, it is considered that the incentives on the council to accept the recommendations will be very strong, given the cost and time savings through the limitation on appeals. It is also considered that the overall costs should be similar to the Schedule 1 process, including the costs of appeals for councils, except for smaller plan changes, where costs may increase (this is analysed further in the cost section that follows). The risk of a shortage in decision-makers could also be mitigated through implementation, such as training new commissioners through the Making Good Decisions programme.

### **Alternative approaches**

#### **Hearing panel makes decisions and appeals on points of law**

A variation on this approach is for the hearings panel to make the final decision on the plan or plan change, rather than it being referred back to the council for the final decision, similar to the approach taken with the Christchurch replacement district plan.

The advantage of this approach would be around cost and timing. It would provide a robust hearing process with no ability for the council to reject the recommendations or develop alternatives (which would then be open to appeal), so time and resources otherwise spent on appeals could be spent on implementation of the plan. The advantage of this is demonstrated by the difference in the number of appeals on the Christchurch plan (10), and the number of appeals on the Auckland Unitary plan (78 appeals on merit to the Environment Court, and 42 on points of law to the High Court<sup>26</sup>).

This option would provide for the involvement of Māori/iwi directly as panel members, but because the panel makes the final decision, it could struggle to accommodate existing and future Treaty co-governance arrangements. There is also a loss of accountability back to the community and a loss of ownership with the council not being the final decision-maker on its own plan, which it is then required to implement. This alternative is therefore not preferred.

A variation of this approach would be for the Minister for the Environment, or the Environment Court being the final decision-maker, however this is not preferred option for the same reasons.

### **Public participation**

#### **Proposed approach – Status quo Schedule 1 process largely maintained**

The proposed approach is that the status quo is maintained for plan development prior to notification, meaning that the council may develop their plan using as much or as little public participation as they choose, making this decision balancing risk, cost and timeliness.

It is proposed that the council must then publicly notify their freshwater plan changes, calling for submissions and further submissions. A hearing will then be held by the regional hearing panel to hear evidence and submitters. A key difference to usual RMA plan hearings is that cross-

<sup>26</sup> Even though this number appears high, this is considered significantly less than what would have been anticipated under a Schedule 1 process. <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/unitary-plan/auckland-unitary-plan-appeals/Pages/default.aspx>

examination may occur at this hearing.

Potential risks with this approach include:

- as noted, feedback from regional council practitioners has indicated that this approach may not provide for sufficient time at the pre-notification stage, because of the 2023 notification deadline, for engagement with communities, and may adversely affect relationships that have been built, especially with tangata whenua
- while enabling cross-examination allows greater testing of ideas and evidence at the hearing stage, being cross-examined by other submitters, lawyers or planners may be difficult for laypersons. This creates a risk to meaningful public participation, both because submitters may choose not to speak at the hearing and thus be available to answer questions and costs of preparing evidence and submissions will increase.

Despite these risks, there will still be the opportunity for meaningful conversations and feedback to occur with the community, during the submissions stage and at the hearing. MfE considers the benefits of progressing plan changes that improve freshwater quality and quantity in the short term, outweigh the risk of curtailing the amount or type of public participation opportunities that may be available.

In addition, implementation assistance will be available to help councils develop their freshwater plan changes in time. Other support could also be provided support to laypeople, for example through a “friend of submitter” approach as currently used by the EPA for Boards of Inquiry.

As noted above, appeals will be provided where the council rejects or amends the panel’s recommendation. As there would have been no testing of the approach taken by council in this situation, the right of de novo appeal will be provided to the Environment Court, ensuring natural justice is retained for submitters.

This approach is therefore preferred, as it will contribute to the objectives of ensuring that implementation of the NPS-FM is made in a timely way, while also maintaining robust decision-making and public participation through mandatory public notification, submissions, further submissions, and a hearing with cross-examination.

## **Alternative Approaches**

### **Less public participation than the Schedule 1 status quo process**

An option could be to decrease public participation currently provided through the RMA Schedule 1 process by removing or making optional further submissions, or a hearing. This is similar to what is provided in SPP.

However, it is considered that it is appropriate to maintain all of the key public participation steps in Schedule 1, as outlined above. This is largely due to the technical, complex and contentious nature of water planning issues, as outlined in section 2 of this RIS.

While, as with SPP, removing some steps such as a hearing or further submissions would shorten timeframes from notification to a decision, there would be less opportunity for people to participate in the process, and potentially less community buy-in on a particularly contentious matter. As with SPP, it would be likely that the merits of removing these aspects of public participation would need to be decided on a case by case basis whether this is appropriate, given that plan change contexts and issues are varied. This would not contribute to the objective

of ensuring that the NPS-FM is implemented in a timely way, as it would be less efficient given either the Chair of the group of freshwater commissioners, or the Minister for the Environment would need to approve this. Therefore, it is considered more time efficient to have one process specified to be used by all councils.

One particular issue raised in consultation related to further submissions. While some practitioners have advised they see little benefit in further submissions, others have identified that further submissions provide the opportunity for people to respond to others submissions and reliefs sought, without having to speak at a hearing. It is therefore appropriate to retain further submissions in the process, as any potential time savings gained through removing them is not considered to outweigh the benefits they can provide. Removing further submissions may mean, for example, that more time at the hearing is spent in cross-examination as matters raised in submissions are explored.

### **Iwi participation and Treaty settlements**

#### **Proposed approach – mandatory requirement for understanding of tikanga Māori and mātauranga Māori on each hearings panel**

Currently, councils work with tangata whenua in preparing freshwater planning documents. The way they work with tangata whenua is varied, with tangata whenua interests being represented through different parts of the planning process, e.g. pre-notification consultation, submissions through the hearing panel, or other arrangements such as Mana Whakahono ā Rohe/Treaty settlement arrangements such as joint management agreements. As previously noted, various existing Treaty settlement arrangements require tangata whenua participation in planning and decision-making on plans.

Currently, under the RMA, councils must consult with tangata whenua through relevant iwi authorities on whether it is appropriate to appoint a hearings commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū. If the council considers it appropriate, it must appoint at least 1 commissioner with this understanding.

It is intended that council and tangata whenua continue to work together as per current arrangements through the new process, and that Treaty settlements and other tangata whenua agreements are complied with through the pre-notification plan development stage, and the decision-making stage. A key difference is that councils and tangata whenua will have less time to do so. Councils are currently struggling to navigate a range of interests in regard to freshwater. The proposed process will therefore provide an incentive for councils to achieve planning outcomes for freshwater and invest in these relationships.

In addition to the current arrangements relating to tangata whenua participation, it is proposed that there is a mandatory requirement for the panel to include at least 1 member who has an understanding of tikanga Māori and mātauranga Māori, to be selected from nominations by local tangata whenua. The ability for a hearings panel size to exceed five in order to accommodate circumstances unique to a region or locality is also proposed, which could allow for more than one member with an understanding of tikanga Māori and mātauranga Māori.

It is considered that any other changes relating to iwi participation, and the role of iwi in decision-making relating to freshwater management should be considered as part of the Essential Freshwater package and the comprehensive review of the resource management system. As this proposal is an interim solution to the issue of implementing the NPS-FM, it is considered appropriate to retain the existing mechanisms for iwi participation under the Schedule 1 process, with the addition of a mandatory panel member who understands the

perspectives of tangata whenua. This will ensure effective implementation of the process in a timely manner.

### **Alternative approaches**

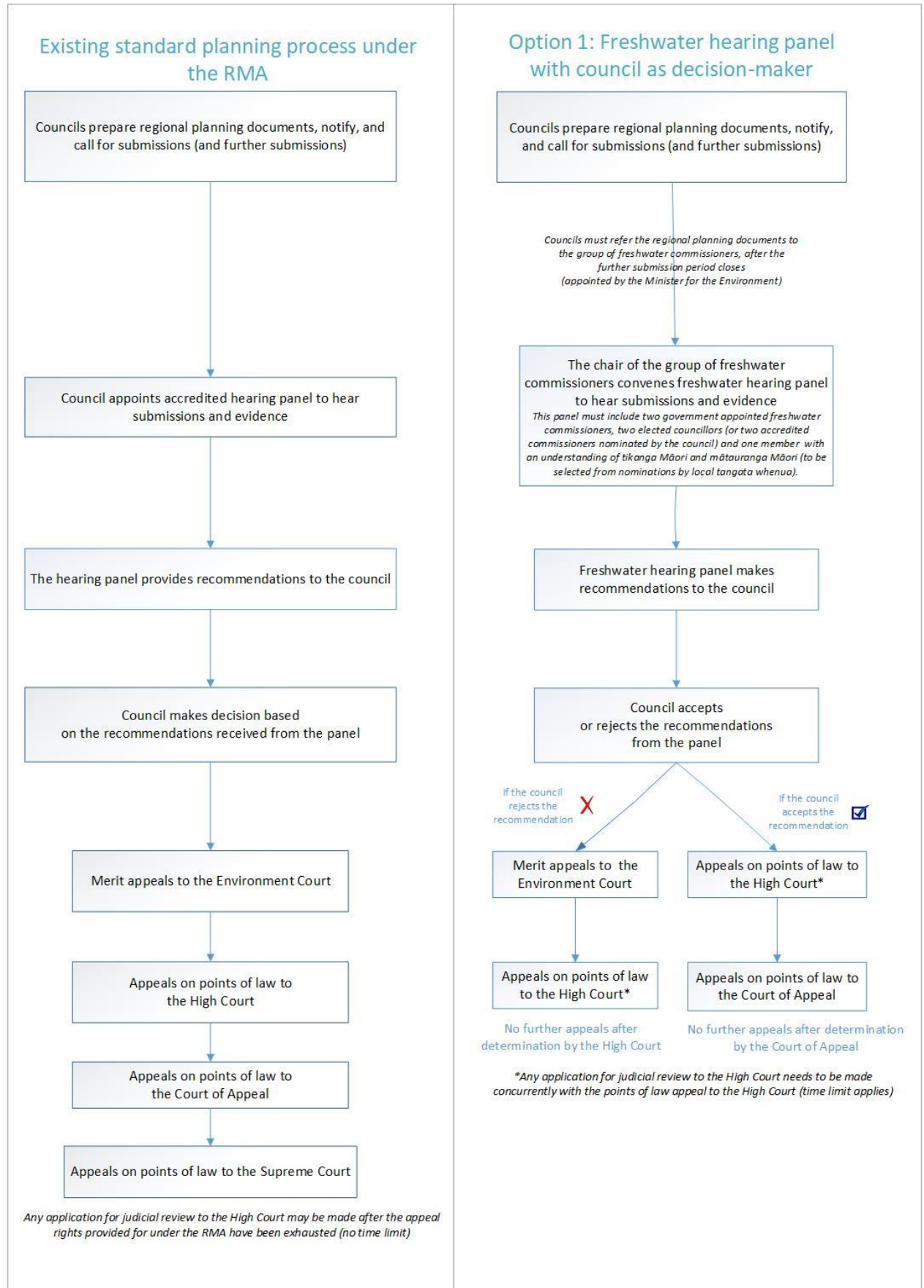
#### **Iwi appointed by iwi authorities to represent tangata whenua**

An alternative option is for iwi authorities to appoint a person to the panel, to represent the views of the tangata whenua. As noted, this is not a preferred approach, as it could mean the panel becomes impractically large. There is also no precedent for this under the RMA, and individual iwi and hapū interests can be represented during other parts of the process.

### **Three practical options**

Based on the above analysis, MfE has developed three practical options. Option 1 below is the preferred option, incorporating all of the preferred approaches analysed above.

## Option 1 – Preferred option: Freshwater hearing panel with council as decision maker



In summary the key aspects of Option 1 (the preferred option) are:

- it is a mandatory process for regional freshwater planning from notification
- it requires notification of regional plans implementing the NPS-FM no later than 31 December 2023, and decisions no later than 31 December 2025
- a national pool of freshwater commissioners will be established by the Minister for the Environment, who then establishes regional hearing panels to hear and make recommendations on these plan changes
- regional hearing panels will contain two national freshwater commissioners. They will also contain one person with an understanding of tikanga Māori and mātauranga Māori (to be selected from nominations by local tangata whenua), and two locally elected representatives (or commissioners nominated by the council). Regional panels may, in some cases, have more than 5 members and will be convened by the national freshwater commissioners
- the national group of freshwater commissioners will schedule hearings, and report regularly to the Minister for the Environment
- the planning process largely maintains the status quo Schedule 1 public participation opportunities, including public notification, submissions, further submissions and a hearing
- other tools, such as cross examination, alternative disputes resolution and mediation will be available to the panel
- the regional hearing panel will make recommendations to the council, who will make the final decisions on the plan
- merits appeals will be provided to the Environment Court on areas where the council differs from the panel's recommendation in their decision, otherwise points of law appeals will be provided only
- the majority of the costs will be incurred by the council. Administrative costs incurred by the freshwater commissioners that cannot be attributed to a specific plan change, will be covered by MfE
- it is the intent that Treaty settlements and other tangata whenua agreements are complied with through the pre-notification plan development stage and the decision-making stage.

### **Option 2 – Regional freshwater panel makes decision on plan**

Option 2 follows a similar architecture to the Christchurch Independent Hearings Panel process. It relies on current processes being followed until after notification of summary of submissions, receipt of further submissions, and preparation and issue of the council officer's report.

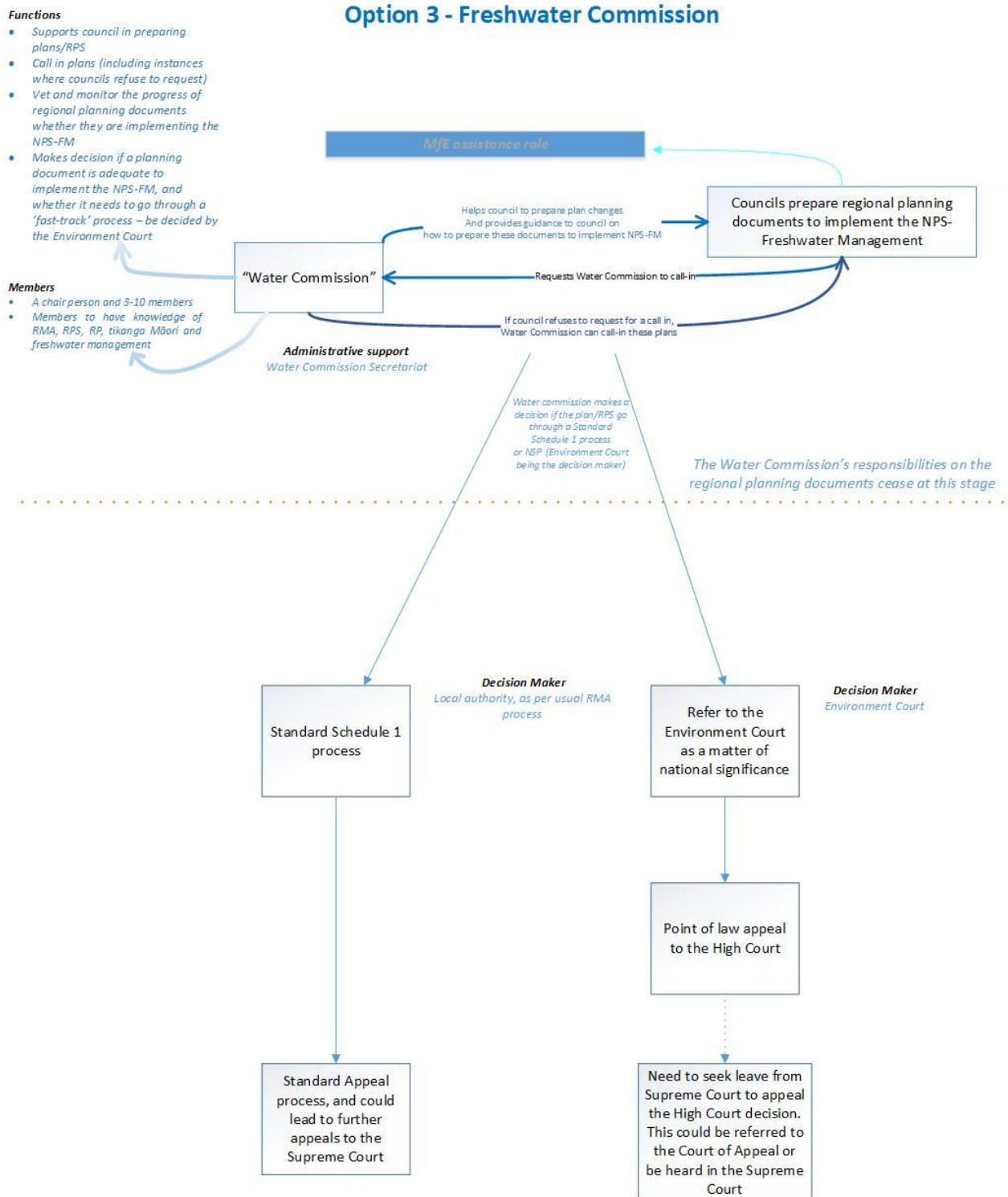
It is the same as Option 1, with the key difference being the decision-maker. With Option 2, the hearings panel instead of the council is the final decision-maker on the plan.

This option is not preferred as it is not considered to contribute to the objective of decisions being made at the appropriate level. It is considered that there could be less community buy-in



of the plan, and It would also be more difficult to reflect treaty settlement mechanisms such as co-governance arrangements with the council no longer making the decision on the plan.

### Option 3 – Freshwater Commission to assist with development of Plans, and determine the process to be used under existing RMA provisions



Option 3 is to establish a 'Freshwater Commission' to assist councils to develop the content of water plans, up to the point of notification.



The Freshwater Commission would then make a decision whether the proposed plan change or plan should be progressed through a normal Schedule 1 RMA process; or be called in as a matter of national significance and heard by the Environment Court.

If Schedule 1 process is used, appeals would be available through existing processes.

If the call-in process is used, decisions would only be available to the High Court on points of law.

This option is not preferred, as it is not considered to contribute to the objective of assisting councils to meet the NPS-FM timeframes. As outlined in section 2, several key difficulties councils have with implementing the NPS-FM on time are with the processes in the legislation, for example the broad appeals rights. Councils have also requested a new process themselves. The Environment Court may not have sufficient resources for this model, and there would be more benefit in a national group of freshwater commissioners having oversight and appointing regional hearing panels, as with option 1.

### **3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?**

The appropriateness of existing or proposed processes were assessed against the following criteria:

- the option assists councils to implement the NPS-FM by 2025
- the option assists councils to implement the NPS-FM without creating unreasonable additional costs
- the option enables robust, independent, high quality decision-making
- decisions are made at the appropriate level to retain accountability
- opportunities for meaningful public participation are retained
- enables Treaty settlements and other tangata whenua agreements to be complied with.

Many of these objectives involve trade-offs. None are mutually-exclusive, but many influence each other. Due to the time critical nature of the freshwater problem, the first objective above has been given more weight than others, as has been noted throughout the analysis.

### **3.3 What other options have been ruled out of scope, or not considered, and why?**

There are many aspects of the existing process where difficulties have been identified, and approaches to overcome those difficulties have been considered when identifying options for amending RMA legislation to facilitate faster implementation of some aspects of the NPS-FM.

Other approaches to addressing these difficulties have been considered throughout Section 3.2. They did not form particular identified options for final analysis as they were unable to achieve the outcomes desired for regulatory change. For example, a fast process could be achieved through a process with no submissions and no hearings. However, the opportunity for meaningful public participation would be removed, and this was considered a fundamentally required objective for any option to be pursued.

An amendment to CPP has not been considered as it is proposed that this plan change process be removed from the RMA.

An amendment to the SPP has not been considered as necessary. Plan changes to implement the NPS-FM are currently within scope of proposals that can be considered for a SPP. However, MfE considers the new process proposed will create better and faster outcomes than using the SPP process, namely because it will be mandatory, have timeframes for notification and decisions, and provide a national group of commissioners with oversight of all freshwater plan changes in the country.

## Section 4: Impact Analysis

**Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?**

**Key:**

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

	No action	Option 1 – preferred option: Freshwater Hearing Panel – with council as decision maker	Option 2 - Freshwater Hearing Panel - with Panel as decision maker	Option 3 - Freshwater Commission to assist and determine the process to progress the Proposed Plan.
<b>The NPS-FM is implemented by the preferred 2025 timeframe.</b>	<b>0</b>	<b>++</b> Mandating the notification of plans by 31 December 2023, and decisions by 31 December 2025 will ensure timeframes are met.	<b>++</b> Mandating the notification of plans by 31 December 2023, and decisions by 31 December 2025 will ensure timeframes are met.	<b>--</b> The time needed for a freshwater commission to be set up that directs plan development, facilitate development of plan changes, as well as the plan change process to follow, is likely to exceed the 2025 deadline required to stop degradation of freshwater as soon as is practicable.

<p><b>The NPS-FM is implemented without creating unreasonable additional costs</b></p>		<p><b>0 <u>Costs on council</u></b>          Although there will be costs on council associated with operation of the independent hearing panel; it is anticipated this will be similar to current Schedule 1 costs, or may result in less overall costs, once the changes in appeal rights are taken into account. The exception may be for minor or technical plan changes. The 2023 date will bring costs forward for councils however.</p> <p><b>0 <u>Costs on central Government</u></b>          Implementation and administrative costs will be covered by MfE through baseline funding taking into account Budget 2019. Although these are additional costs, these are considered reasonable when compared to the social and economic costs incurred if freshwater decline continues.</p>	<p><b>0 <u>Costs on council</u></b>          Although there will be costs on council associated with operation of the independent hearing panel; it is anticipated this will be similar to current Schedule 1 costs, or may result in less overall costs, once the changes in appeal rights are taken into account. The exception may be for minor or technical plan changes. The 2023 date will bring costs forward for councils however.</p> <p><b>0 <u>Costs on central Government</u></b>          Implementation and administrative costs will be covered by MfE through baseline funding taking into account Budget 2019. Although these are additional costs, these are considered reasonable when compare to the social and economic costs incurred if freshwater decline continues.</p>	<p><b>+ <u>Costs on council</u></b>          Overall, this option would have benefits for council, as the Freshwater Commission would assist with plan development.</p> <p><b>-- <u>Costs on central Government</u></b>          The increased costs on central government would be relatively substantial, as a result of the operation of the water panel, which could include commissioning of gaps in the evidential base required to prepare Plan Changes that implement the NPS-FM.</p>
<p><b>Robust, independent, high quality decision-making</b></p>	<p><b>0</b></p>	<p><b>++</b> While decision-making is retained by the council, those decisions will be strongly guided by the recommendations of an independent, suitably qualified hearing panel that has used robust inquisitorial methods to identify optimal outcomes.</p>	<p><b>++</b> The independent, suitably qualified hearing panel that has used robust inquisitorial methods to identify optimal outcomes will result in high quality decision-making.</p>	<p><b>0</b> This largely uses existing options for decision-making under the RMA.</p>

<b>Decisions are at the right level, and retain accountability</b>	<b>0</b>	0 Decision-making is retained by the council.	- Decision-making is by the Panel. The council's loss of accountability, could result in decreased willingness to enforce or defend a decision they do not agree with, did not make, or that may not fit with the remainder of the council's planning documents. There may also be negative implications for integrated management.	- The proposed planning provisions and decision-making process is set by the Panel, but uses existing processes under the RMA. This may result in some loss of accountability and negative implications for integrated management.
<b>Opportunities for meaningful public participation provided</b>	<b>0</b>	0 Opportunities for meaningful public participation, as currently in Schedule 1, will be available, through the notification and hearing process including opportunities for cross-examination. Implementation support could ensure any negative implications for public participation are mitigated.	0 Opportunities for meaningful public participation, as currently in Schedule 1, will be available, through the notification and hearing process including opportunities for cross-examination. Implementation support could ensure any negative implications for public participation are mitigated.	+ Opportunities for meaningful public participation will be available, through the plan development phase, and may be available through any hearing or appeals. However, uncertainty in process may affect people's willingness or ability to be involved in any particular stage of the process.
<b>Treaty Settlements and other Tangata Whenua agreements complied with</b>	<b>0</b>	0 The intent is for existing Treaty settlements and other agreements with tangata whenua relating to planning, for example co-development of the plan through pre-notification, or joint management arrangements on decision-making to be complied with.	- - The council could recognise existing agreements and settlements through the pre notification phase. However the decision-making process will be undertaken by the hearings panel, rather than the council.	- Existing agreements and settlements may or may not be able to be recognised through the plan development, hearing or decision-making phase.

## Section 5: Conclusions

### 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Option 1, establishing regional freshwater hearing panels, with a national group of commissioners to oversee and co-ordinate hearings, is the preferred option as it will contribute to all of the objectives of the proposal. It strikes a reasonable balance between public participation and timely decision-making. Most importantly, it retains the accountability of the local authority, but ensures a robust hearing process that can be subject to cross-examination, with independent commissioners with the required expertise. It is expected to deliver benefits in terms of enabling timely limits or policy setting that will halt the continued decline of our freshwater quality, quantity and ecosystem health. The intent is for existing Treaty settlements and other agreements with tangata whenua relating to planning, for example co-development of the plan through pre-notification, or joint management arrangements on decision-making, to be complied with.

It is expected that Option 1 would still enable stakeholder involvement. It is also expected to improve confidence in decisions through greater transparency, and deliver time and cost savings by avoiding merit appeals in most cases.

This new process will be a testing ground for comprehensive system reform, and will be not be inconsistent with what MfE intends to achieve through the Essential Freshwater work programme to fix systemic failures and gaps in the system for managing freshwater and land use [CAB-18-MIN-0296, paragraph 4.2 refers].

When assessed against the objectives set for a RMA legislative amendment to address freshwater quantity, quality and ecosystem health issues in the short term, Option 1 meets those objectives better than the current Schedule 1 processes will, provided appropriate support for implementation occurs.

As outlined in more detail below, key risks associated with this preferred option will be addressed, largely through potential MfE implementation support and assistance. Additional funding has been obtained in Budget 2019 to undertake that work.

### 5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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#### Additional costs of proposed approach, compared to taking no action

Regional/ unitary councils	Plan preparation The 2023 timeframe means that councils may need to prioritise freshwater planning, and	Medium. Councils will need to fund the process in a shorter period of time, instead of having	Medium
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	<p>deprioritise another area of work, without significant injection of resources/funding from their own council.</p> <p><i>Post-notification</i></p> <p>It is noted that councils must use the Government appointed commissioners (x2) on their hearing panel. The panel must also comprise of a commissioner with understanding of tikanga Māori and mātauranga Māori (to be selected from nominations by local tangata whenua) and two locally elected members (or commissioners nominated by the council). The RMA does not require independent commissioners to hear plan changes or regional policy statement (although many do use them). The new planning process may result in a higher hearing cost for councils in a short period of time. This may impact on the budget forecasting (required under Local Government Act, and reviewed every 3 years). The cost of an NPS-FM plan change (from notification to decision) ranges from approximately \$300,000 to \$1.7 million (note that this data is self-reported by councils and approximate only). There are on average 20 NPS-FM plan changes per year reported.</p> <p>This approach may defer other planning projects proposed by regional councils, as efforts are refocused onto freshwater. It may raise costs for councils in regard to smaller plan changes, as five hearings commissioners will be required, which may be more than previously used.</p>	<p>flexibility to allocate their funding over a longer term, to reduce the impact.</p> <p>This may also impact on the quality of the plan as a collaborative approach usually takes a longer period of time, and requires trust building.</p> <p>The new process may result in a higher hearing cost but it is expected that the restriction of appeal rights will help to save council cost in the long run.</p> <p>It is worth noting that some of the impact could be mitigated through better communication by councils with their councillors, and financial planning (as the forecast is often for the 10-15 years ahead, and reviewed every 3 years).</p>	
City/district councils	There will be a smaller impact on city and district councils, given the process is intended for freshwater planning, which is a function of	Low. Although it is acknowledged that the change to the RPS or plans to give	Low

	<p>regional councils.</p> <p>However, any changes to the Regional Policy Statement, which is considered to be a regional planning document under the new process, would have some impact on the city/district councils depending on how their district plans manage activities which have an impact on freshwater quality. For example, sediment and silt control measures near to potentially sensitive streams/waterways.</p>	<p>effect to the NPS-FM may have some impact on the existing district or city plans, this would need to be communicated by regional councils to city/district councils earlier so they can plan for their district plan reviews.</p>	
<p>Ministry for the Environment (MfE)</p>	<p>In order to ensure that quality plans are being produced before 31 December 2023 notification timeframe, MfE will need to consider providing sufficient support for the regional/city councils on the development of their proposed plans.</p> <p>There will be costs to central government for the development of a package of support and guidance in setting regional limits.</p> <p>MfE may need to employ more FTEs to assist/guide councils on meeting the NPS-FM policy intent in the most effective manner or undertake more procurement (central) to collect the required evidence for councils. The additional cost to MfE is estimated to be between \$200,000-\$500,000.</p>	<p>Medium.</p> <p>MfE has been supporting councils in developing plans to protect water. However, given the state of freshwater quality and the requirement to notify by a set timeframe, MfE will be required to invest more in this area in order to help councils to develop better plans.</p>	<p>Medium</p> <p>The review of the NPS-FM delivery and NMS, indicated that the councils would not be able to meet the timeframe, if not supported more by MfE or similar.</p>
<p>Water users</p>	<p>A more stringent approach (once the plan is notified or becomes operative) under the plan may result in uncertainties for water users, who have invested in their infrastructure to use or take water.</p>	<p>Low. This is because the NPS-FM has already indicated a timeframe, and that consent reviews could be triggered by any plan changes</p>	<p>Low</p>

	Existing consents could be reviewed once the rules become operative. It is anticipated that the new freshwater planning process, which has curtailed appeal rights, would enable a plan to become operative quicker.	or NES.	
Tangata Whenua	Due to the set timeframe, there may not be adequate time to undertake a comprehensive consultation process with tangata whenua. This is a complex issue, especially in areas where there are settlements (ie, co-governance) or settlement negotiations are still ongoing.  There will be resourcing implications for iwi. This impact will be felt particularly for those iwi who are pre-settlement, or under resourced, or those who have interests in multiple regions and therefore need to be involved in multiple planning processes.	Medium	Low
<b>Total Monetised Cost</b>		Medium	Low
<b>Non-monetised costs</b>		Medium	Low

#### Expected benefits of proposed approach, compared to taking no action

Wider public/resource users	The proposal will contribute to improved water quality through the implementation of the NPS-FM. There will be benefits to the wider public and resource users because of this environmental impact.	Medium	Low
Regional/unitary councils	Councils will have access to commissioners with specialised skillset, and appeals will be narrower in scope. This would likely save costs of the planning process in the medium to long term.  There will also be significant benefits to regional councils in that the process will enable their plans to be implemented much faster	High	Medium

	<p>than otherwise anticipated, meaning they can focus resources in implementing the plan, resulting in environmental benefits. A bespoke process has been requested by the councils.</p>		
<p>City/district Councils</p>	<p>There will be a smaller impact on city and district councils, given the process is intended for freshwater planning, which is not currently one of their functions.</p> <p>However, if there were changes to the Regional Policy Statement, which is considered to be a regional planning document under the new process, would have some impact on the city/district councils depending on how their district plans manage activities which have an impact on freshwater quality. For example, sediment and silt control measures near to potentially sensitive streams/waterways.</p>	<p>Low. Although it is acknowledged that the change to the RPS or plans to give effect to the NPS-FM may have some impact on the existing district or city plans, this would need to be communicated by regional councils to city/district councils earlier so they can plan for their district plan reviews.</p>	<p>Low</p>
<p>Ministry for the Environment (MfE)</p>	<p>The process will result in improved environmental outcomes, and implementation of the NPS-FM, which helps to fulfil some of MfE's regulatory stewardship role.</p>	<p>High</p> <p>MfE has been supporting councils in developing plans to protect water. However, given the state of freshwater quality and the requirement to notify by a set timeframe, MfE will be required to invest more into this area of work in order to help councils to develop better plans that will protect water, whilst still safeguard interests of different water users.</p>	<p>Medium</p>

Water users	Plan changes may trigger a process of consent review. A more stringent approach under the plan may result in uncertainties for water users, who have invested in their infrastructure to use or take water.	Low	Low
<b>Total Monetised Benefit</b>		Medium	Medium
<b>Non-monetised benefits</b>		High	Medium

### 5.3 What other impacts is this approach likely to have?

The RMA has been amended numerous times since enactment, with a range of planning processes now available. Further amendment and an additional new process may perpetuate issues with effective implementation, and perceptions of the RMA being complex. It is proposed that this new process be progressed at the same time that the CPP process is removed from the RMA, to avoid further unnecessary complication.

This new required freshwater planning process may have implications for implementation of other National Direction, such as the National Policy Statement for Urban Development Capacity (NPS-UDC) and National Planning Standards. The competing importance and weighting of all the different National Direction is uncertain, and it is acknowledged that the timelines for delivery overlap.

A key assumption is that while more detailed freshwater quality and quantity planning for individual catchments is being undertaken using collaborative processes; first tranche limits or policy required under the NPS-FM, set through this tailored process, will assist in halting the continued decline of freshwater while those more substantial but slower processes continue.

It is difficult to quantify that the potential benefits of interim plan changes outweigh the costs of developing such provisions, while catchment-specific planning continues. But it is clear that once lost, freshwater quality, quantity and ecosystem health is difficult to restore.

As noted in section 1, there are also important intrinsic and cultural values placed on water. These cannot clearly be described as costs or benefits.

### 5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

MfE has not identified any inconsistency with the Government's "Expectations for the design of regulatory systems".

## Section 6: Implementation and operation

### 6.1 How will the new arrangements work in practice?

The proposals will largely be given effect through:

- legislation to amend the RMA
- consequent establishment of the group of freshwater commissioners
- implementation assistance provided by MfE.

MfE will communicate the changes through various pieces of guidance. This will include:

- writing new fact sheets for the proposed process
- updating relevant technical guidance products and creating new technical guidance where required
- engagement with councils and other stakeholders.

The Minister for the Environment will be responsible for appointment of members to the group of freshwater commissioners. MfE (or the EPA) will be responsible for secretariat support and ensuring efficient functioning of the group.

Councils will be responsible for the development of proposed plan changes. To assist the freshwater commissioners in undertaking their statutory responsibilities, councils will be responsible for responding to requests for information, and making decisions on the plan changes. Councils will also be respondents to appeals arising from any of their decisions.

MfE has also had discussions with some council planning practitioners regarding the proposals and they have highlighted the need for sufficient, timely and appropriate central government plan development assistance. As further described below, to minimise disruption and ensure integration can be managed, plan changes to implement the NPS-FM notified before this new process takes effect will continue to be processed in accordance with standard Schedule 1 requirements as they should still meet the 2025 timeframe.

It is proposed that the Minister for the Environment be empowered to issue drafting instructions to the Parliamentary Counsel Office to ensure the workability of the new freshwater planning process and develop any commencement, transitional and savings provisions to provide for integration with existing arrangements.

MfE will update guidance in a timely manner to mitigate implementation risks.

In terms of matters outside scope of the freshwater commissioners, MfE will also work with councils during the policy implementation and provide support where practicable. Each council has a relationship manager from MfE who can assist with implementation support either directly, or by putting them in contact with the appropriate person. There is also an opportunity for councils and MfE to come together to discuss practice at meetings.

#### **Transitional arrangements**

Transitioning from the current Schedule 1 process to the new freshwater planning process will create some costs and uncertainty, particularly for councils. These transitional costs would be greater if all of the amendments were to commence immediately (the day after Royal Assent).

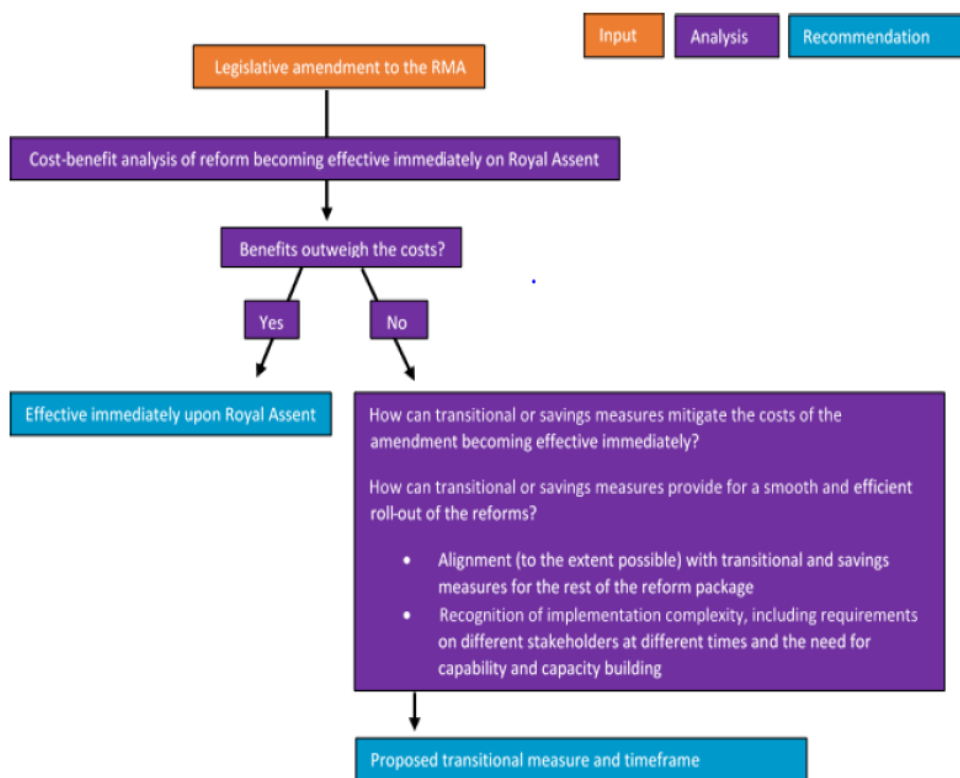
Transitional arrangements will be proposed to help mitigate these transitional costs and facilitate the smooth and efficient commencement of the reforms. Commencement provisions will be designed to:

- be mindful of who will be impacted and when
- promote understanding of the reform package by those affected
- allow time for processes to be altered
- provide certainty and continuity for processes already underway.

Figure 1 below shows the framework that will be used to determine commencement of the proposals. This approach was used for the Resource Legislation Amendment Bill 2015.

**Figure 1: Analysis framework**

Transitional measures and timeframes: analysis framework



It is proposed that decisions on transitional provisions and commencement timing be delegated to the Minister for the Environment. MfE recommends that the new freshwater planning process for plan changes that give effect to the NPS-FM, or other water related plan changes, take effect as soon as possible after the day after Royal Assent, given the 2025 timeframe.

Existing Schedule 1 plan making processes should be used for all plan changes that have been notified prior to the Act being given Royal Assent, but that the new process be used for all relevant plan changes ready for notification after the date of Royal Assent.



## 6.2 What are the implementation risks?

In addition to the risks addressed throughout Section 3, there are a few particular risks that will need to be managed:

### **Quality of Plans**

Plans may not be of a sufficient quality or have the necessary evidence base to fully justify proposed provisions when notified, because of the 2023 legislated date. Bringing forward the date from that currently envisaged by the NPS-FM has the potential to create significant resource issues for councils and parties wishing to participate in processes. In addition, work on other planning issues may be delayed as a result of the reprioritisation of freshwater above other matters.

### **Finding available/suitable freshwater commissioners**

There is a large risk around the availability and experience of people suitable for the group of freshwater commissioners. There is not a large pool of these specialist qualified people around the New Zealand; and they may have difficulties in reorganising existing work commitments to meet the needs of this group and the timing proposed by this amendment (ie all hearings held between 2023 and 2025).

It may be difficult to find persons without conflicts, prior involvement, or with suitable knowledge for all of New Zealand. However, by ensuring that there is a sufficient pool of qualified persons; those areas of conflict can be easily identified, and the specialist knowledge allocated where required reflecting the particularities of each plan change.

### **Delivery of multiple national direction instruments**

A national direction instrument is not stand-alone and forms part of the wider resource management system. Implementation of national direction instruments is complex. Decisions are made in the context of regional policy statements, district and regional plans and other pieces of national direction. The new freshwater planning process will therefore be additional to other work councils are currently undertaking, and there may be the perception that the NPS-FM is more important than other pieces, or there is tension between the NPS-FM and other national direction instruments.

### **No engagement with tangata whenua**

There has been no direct engagement or consultation with tangata whenua on this proposal. A Māori Engagement Strategy has not been prepared. There will be opportunities for participation in the Select Committee process. There are also opportunities for direct involvement and consultation for tangata whenua in the proposed freshwater planning process, which may address this risk to some extent.

This process is an interim step to halt the decline of freshwater quantity and quality, while the more strategic Resource Management System Review, and Essential Freshwater Package is being progressed.

# Section 7: Monitoring, evaluation and review

## 7.1 How will the impact of the new arrangements be monitored?

MfE has a regulatory stewardship role in regard to New Zealand’s environment. This means ensuring New Zealand’s continued prosperity does not compromise the needs of future generations. As a regulatory steward, MfE ensures that environmental regulation is achieving this aim as effectively as possible.

In the RMA regulatory system, MfE is currently focused on:

- comprehensive reform of the resource management system, including examining the causal links between the RMA system outputs and outcomes
- assisting implementation and monitoring of national direction, and development of new national direction.

MfE collects data through the NMS. The NMS requires councils, the Environmental Protection Authority and MfE to provide detailed data each year on the functions, tools, and processes that they are responsible for under the RMA. It is intended to provide a comprehensive and co-ordinated national framework to monitor the RMA.

Councils are also required under the NPS-FM to report on their progress of implementation, through progressive implementation programmes. MfE will also play a role in checking that councils are meeting the required timeframes.

## 7.2 When and how will the new arrangements be reviewed?

The new proposals will be reviewed alongside the previous 2017 amendments. This will primarily be done through use of the NMS which is collected annually and data can then be extracted.

Ongoing review of the implementation of the NPS-FM will occur. Any trends of change in expected delivery of outcomes of the NPS will be noted.

The provisions will also be reviewed through other methods to assist in informing a longer term review of the RMA. An example of review would be utilising organisations such as the New Zealand Planning Institute and Regional Council Planning Managers to connect with users of the resource management system on the process.

Councils will also be able to raise their own concerns, and pass concerns of the public and other professional to MfE through their resource management relationship manager.

Members of the public and planning professionals can call MfE to discuss the changes or write directly to the Minister for the Environment.

As the new arrangements are reviewed, progress is continuing on a more comprehensive reform to the resource management and planning system to address wider issues.

# Appendix 1 The Freshwater NPS -National objectives framework

The NPS has an objective to safeguard:

- a) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of freshwater; and
- b) the health of people and communities, as affected by contact with freshwater;

in sustainably managing the use and development of land, and of discharges of contaminants.

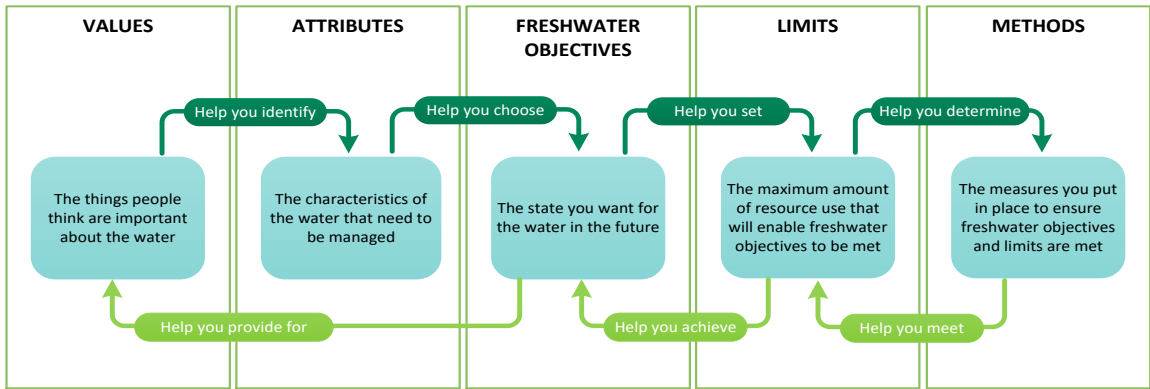
To manage freshwater the Freshwater NPS introduced a national objectives framework which can broadly be thought of as a **Values – Freshwater Objectives – Limit setting – methods** cascade. The framework firstly requires councils to establish what values apply to the freshwater bodies in their region. This must include the **two compulsory national values of ecosystem and human health**, plus any other national or local values the community identifies.<sup>27</sup> Councils must then establish freshwater objectives for those values. Freshwater objectives should ensure that those aspects (attributes) of water quality relevant to the values are maintained or improved.

**Freshwater objectives** must be set using every attribute in Appendix 2 of the NPS (as they are all linked to the two compulsory values), and any other attributes which are appropriate for supporting the full range of values the community holds for water bodies in their region. Freshwater objectives describe the intended environmental state of freshwater that would provide for a value, conveyed by the attribute states A–D. Freshwater objectives must be set at a level that ensures water quality is either maintained(set at current state) or improved (better than current state).

**Limits** on resource use must then be established that will achieve the freshwater objective. A limit is the maximum amount of ‘resource use’ that is possible, while still meeting the freshwater objective over time. Resource use is often thought of as a ‘water take’ (consumptive use) or ‘discharge allowance’ (assimilative capacity of the water body to absorb nitrogen). However it can also be any other kind of resource use, eg, stock access to water, grazing on certain types of land, or urban greenfield developments.

**Methods (including rules)** must also be established in the plan to ensure the limit is applied to resource users. Regional plan rules tell users what can and cannot be done with water and other methods (not rules) can incentivise change. Figure 1 summarises the framework concept and how limits fit in to it.

Figure 1: The Freshwater NPS framework from values to methods



<sup>27</sup> This includes the ‘national values’ and any others identified by the community.