ESSENTIAL FRESHWATER: ACTION FOR HEALTHY WATERWAYS

Introduction

1. The Dunedin City Council (DCC) thanks the Ministry for the Environment (MfE) for the opportunity to provide feedback on the Essential Freshwater package of proposals, which consists of Action for healthy waterways – a discussion document on national direction for our essential freshwater (the discussion document), a draft revised National Policy Statement for Freshwater Management (NPS-FM), draft National Environmental Standards for Freshwater (Freshwater NES) and draft Stock Exclusion Section 360 Regulations.

2. The DCC is committed to improving Dunedin’s environment, including the quality of our freshwater. The DCC supports the intent behind the proposals and agrees with the need for a nationally consistent approach to improving freshwater quality. In particular, the DCC supports the application of Te Mana o Te Wai as a national framework for understanding water and agrees with the three-tiered hierarchy of obligations under Te Mana o Te Wai.

3. As a territorial authority with responsibilities for three waters services and district planning, the DCC is keenly interested in the relationships between the Essential Freshwater package and other Government initiatives currently in progress, including the Three Waters Review, the Resource Management Amendment Bill and the introduction of National Policy Statements for Urban Development and Highly Productive Land.

4. This submission provides general comments on the proposals set out in the Essential Freshwater package and twelve specific requests. Appendix 1 provides background information on the DCC’s roles and strategic priorities, and explanatory notes to support specific requests.

General comments

5. The DCC supports the overall objective of the draft NPS-FM, and generally supports policies 1 through 13 (subject to the specific requests below). The proposed amendments to the current NPS-FM are intended to improve clarity.

6. Other provisions in the draft NPS-FM and the Freshwater NES set out what local authorities must do to give effect to the NPS-FM’s objective and policies. In relation to these provisions, the DCC makes the following general comments:

   a. The DCC broadly supports the concept of Te Mana o Te Wai, but asks the Government to ensure that territorial authorities are enabled to play a role in determining local
understandings of Te Mana o Te Wai and in freshwater planning more broadly in the future, particularly in urban areas.

b. The DCC broadly supports the concept of integrated management of freshwater and the requirement for territorial authorities to use District Plans to address effects of urban development on water.

c. Implementation of the National Objectives Framework is crucial to gaining the information required to support good freshwater management outcomes. Providing, as the NPS-FM does, a significant degree of flexibility for tailoring approaches across New Zealand also risks creating significant variability in approaches and therefore outcomes, and it may result in uncertainty for affected parties. Inclusion of more guidance or bottom lines within the framework would help address this concern, as would provision of training for local authority staff involved in plan writing, resource consents, compliance, environmental monitoring and reporting.

d. The DCC supports, in principle, the measures proposed to protect and enhance urban streams and wetlands, and to provide for fish passage. However, the DCC requests the Government ensures they do not unreasonably impact on the ability of territorial authorities to provide infrastructure services for communities.

7. The DCC supports, in principle, the Government’s high level proposals to introduce a more nationally consistent approach to wastewater and stormwater management, and to revise the current National Environmental Standards for Sources of Human Drinking Water (Drinking Water NES) to support the delivery of safe drinking water. The DCC looks forward to continuing discussions with the Government on these proposals through the Three Waters Review, and after more detailed proposals for drinking water source protection and stormwater and wastewater management are announced in 2020.

8. The DCC notes detailed proposals for three waters service delivery and funding reforms, and more detailed proposals for the reform of environmental regulation of wastewater and stormwater, are yet to be released as part of the Three Waters Review. We look forward to further engagement with the Government on these proposals.

9. The DCC anticipates the implementation of some Essential Freshwater proposals may result in significant funding challenges for local authorities, though the implementation costs of the high level stormwater and wastewater proposals are difficult to estimate at this stage. The DCC also notes the implementation of the Essential Freshwater proposals is likely to have wide-ranging implications for the farming sector in the Dunedin area. Farming industry bodies are better placed to comment on the detail of those implications.

10. The DCC urges the Government to consider, through rigorous regulatory impact analysis, how it can appropriately balance the introduction of stronger regulations to protect the environment and public health with the ability of local authorities and other parties to pay, what role economic regulation might play in achieving an appropriate balance, and how implementation might be aligned with local authorities’ statutory planning and budgeting processes. The DCC seeks commitment from the Government that it will support funding of local authority projects necessary to implement upgrades required by the Essential Freshwater proposals.
11. The DCC considers such a comprehensive and complex proposal requires careful consideration and drafting of regulatory documents. As substantial reworking of the proposal to address matters raised through consultation may be required, further consultation would be beneficial.

**Specific requests**

12. The DCC requests that the Government:

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<td>1</td>
<td><strong>Ensures</strong> territorial authorities are involved in freshwater planning and management by:</td>
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<td>a. restoring, in the proposed streamlined planning process to be established by the Resource Management Amendment Bill, opportunities for territorial authorities to provide input into regional freshwater planning.</td>
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<td>b. acknowledging the role of territorial authorities in determining local understandings of Te Mana o Te Wai, by including a specific requirement in the NPS-FM (section 3.2) that regional councils engage with territorial authorities during the planning and consultation process.</td>
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<td>2</td>
<td><strong>Specifies</strong>, in section 3.4 of the NPS-FM, bottom-line expectations for the methods territorial authorities must include in district plans to satisfy the requirements of integrated management of freshwater as part the National Objectives Framework. This should include the requirements relating to:</td>
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<td>a. encouraging the co-ordination and sequencing of urban growth, land use and development and the provision of infrastructure;</td>
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<td>b. regulating impervious surface cover and/or requiring on-site filtration;</td>
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<td>c. using zoning to manage certain types of development in areas where the effects on freshwater could not be adequately managed; and</td>
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<td>d. providing for use of green infrastructure or water sensitive urban design techniques in stormwater management.</td>
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<td>3</td>
<td><strong>Clarifies</strong>, in section 3.18 of the NPS-FM, the roles and responsibilities of territorial authorities and District Health Boards in contact recreational water quality monitoring, with a focus on responsibilities for public notification of issues, public health messaging and signage.</td>
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<td>4</td>
<td><strong>Clarifies</strong>, with respect to Policy 3 of the NPS-FM, the party (or parties) anticipated to undertake the systematic monitoring, and the party (or parties) expected to take action to reverse deteriorating trends.</td>
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<td><strong>Provides</strong>, in the NPS-FM (Part 3, Subpart 2: National Objectives Framework), more guidance and consistency on:</td>
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<td>a. objectives or standards for defining Freshwater Management Units (FMU). The DCC suggests FMUs be established on a catchment basis, and that smaller, more targeted FMUs be employed in urban environments with the most impacted water quality.</td>
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<td>b.</td>
<td>the process for formally establishing and changing FMUs.</td>
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<td>c.</td>
<td>objectives or standards for establishing monitoring sites within FMUs. The DCC suggests that, as a minimum, monitoring sites should represent a wide range of FMU features, including: threatened species habitats, outstanding waterbodies and inland wetlands, and other values identified such as drinking water or mahinga kai. Monitoring sites should also be located to allow a reasonable assessment of a catchment and to support quality and quantity accounting systems. Developing clear objectives for long-term monitoring would assist in establishing appropriate monitoring sites.</td>
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<td>d.</td>
<td>identifying baseline information requirements for setting current attributes, with timeframes provided for regional councils to collect any missing minimum data.</td>
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<td>e.</td>
<td>standards to ensure the current state of a waterbody, along with the technical viability of achieving a given level of improvement, is appropriately assessed when target states and timeframes are set.</td>
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<td>f.</td>
<td>methods for monitoring progress toward achieving target states and environmental outcomes.</td>
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<td>g.</td>
<td>requirements for consultation with territorial authorities as part of the implementation of the National Objectives Framework, including on FMUs, monitoring sites, values and outcomes, and the development of action plans.</td>
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### 6 Clarifies that regional councils are required to undertake the specified monitoring of FMUs referenced throughout Part 3 of the draft NPS-FM. To support regional councils in this role, consent conditions could require consent holders to make financial contributions towards monitoring where their activities may adversely impact freshwater quality within a FMU. |

### 7 Revises the draft NPS-FM and draft Freshwater NES to ensure provisions to protect streams, wetlands and fish passage do not unreasonably impact on the ability of territorial authorities to provide the following infrastructure services for communities:

- management of urban stormwater systems in a manner that minimises risks to people, property and the environment;
- spatial planning approaches that facilitate infill development in urban areas;
- roading infrastructure; and
- landfills.

Measures to achieve this could include:

- amending Policy 8 and Policy 9 of the draft NPS-FM;
- providing clarity and consistency in use of the terms ‘piping’, ‘culverting’, ‘infilling’ and ‘reclamation’ in both the NPS-FM and Freshwater NES.
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<td>c.</td>
<td>amending the definition of ‘public flood control or drainage’ in the draft Freshwater NES to include the stormwater drainage management activities of all territorial authorities.</td>
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<td>d.</td>
<td>amending clause 23 of the draft Freshwater NES so that it provides for the installation of new passive flap gates in public drainage works as a discretionary activity, and maintenance and replacement of existing passive flap gates as a permitted activity.</td>
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<td>e.</td>
<td>amending the draft NPS-FM and draft Freshwater NES to enable works associated with infrastructure maintenance in and around enhanced natural wetlands.</td>
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<td>8</td>
<td><strong>Clarifies</strong> that the obligation to undertake standard wetland monitoring is a requirement of regional councils. To support regional councils in this role, consent conditions could require consent holders to make financial contributions towards monitoring where their activities may adversely impact a wetland. If a consent holder is required to undertake monitoring of a wetland, the monitoring specified in clause 5 of the draft Freshwater NES should be limited to any effects directly attributable to the consent holder’s activity.</td>
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<td>9</td>
<td><strong>Establishes</strong>, through new National Environmental Standards for Wastewater Discharges and Overflows (Wastewater NES):</td>
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<td>a. a consistent approach to how wastewater discharge consent conditions are set to reflect the relevant values of the local area and receiving environment. This could include guidance on how to set a range of consent conditions including limits, reporting requirements, environmental monitoring and investigations.</td>
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<td>b. bottom lines for wastewater discharges that are differentiated between discharges to different receiving environments (for example, freshwater, estuarine, marine and land).</td>
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<td>c. a nationally consistent framework for establishing, through consents, bottom lines and targets for wet weather overflows according to the relevant values of the local area and receiving environment. Using this framework, regional councils, drawing on the results of monitoring of environmental and societal impacts, could periodically review and increase bottom line requirements as service providers make improvements towards their overflow targets.</td>
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<td>d. common terminology around wet weather overflows to support conversations about change.</td>
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<td>10</td>
<td><strong>Addresses</strong>, in any national guidance on stormwater policy and network management, issues relating to ownership and lifecycle management of green infrastructure assets.</td>
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<td>11</td>
<td><strong>Undertakes</strong> a comprehensive regulatory impact analysis that addresses the social and cultural costs and benefits of the proposal (and any amendments to the proposal), in addition to the economic and environmental impacts. The regulatory impact analysis should include impacts on the ability of territorial authorities to provide efficient, effective and affordable infrastructure services for communities.</td>
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12 Adjusts the timeframes for implementing the proposal to allow for consideration of the issues raised through this consultation, solutions to be comprehensively and carefully considered, and detailed drafting to be developed and further consulted on.

CONCLUSION

13. The DCC thanks MfE once again for the opportunity to provide feedback on the discussion document, draft NPS-FM, draft Freshwater NES and draft Stock Exclusion Section 360 Regulations. The DCC looks forward to continuing discussions with the Government on measures to improve freshwater quality and the performance of three waters systems.

14. The DCC requests any other changes be made to the Essential Freshwater proposals as necessary to address the matters raised in this submission.

15. The DCC wishes to speak to this submission should an opportunity arise.

Yours sincerely

Personal details removed

Mayor of Dunedin
APPENDIX 1: DCC ESSENTIAL FRESHWATER SUBMISSION – BACKGROUND AND EXPLANATORY NOTES

BACKGROUND

Freshwater and Dunedin’s strategic objectives

1. The Dunedin City Council (DCC) 3 Waters Strategic Direction Statement 2010-2060 sets out an integrated approach to the sustainable management of water, wastewater and stormwater in Dunedin. Improving the quality of stormwater and wastewater discharges to minimise impacts on the environment is one of seven key strategic priorities identified in the strategy.

2. In 2016, the DCC adopted Te Ao Tūroa – The Natural World – Dunedin’s Environment Strategy. Te Ao Tūroa takes a partnership approach to delivering on the city’s environment ambitions, with stakeholders including the Otago Regional Council (ORC) and Kāi Tahu working together with the DCC to facilitate and secure a healthy environment now and into the future. Te Ao Tūroa identifies reducing wastewater overflows and reducing polluting discharges to land, air and water as actions the DCC will take to achieve a healthy environment in Dunedin.

Dunedin City Council water services

3. The DCC provides water supply, wastewater and stormwater services to customers across Dunedin. The DCC’s 3 Waters Group manages the delivery of these services.

4. The DCC’s water supply system collects, treats and delivers drinking water to customers. The system includes 21,000 hectares of water catchment, 1,386km of pipeline, 28 pumping stations, 63 reservoirs (for raw and treated water) and 6 active water treatment plants.

5. The DCC’s wastewater system collects, treats and disposes of wastewater from domestic and trade waste customers. The system comprises 909km of pipes, 87 reticulation pumping stations, 115 domestic pumping stations and seven wastewater treatment plants (WWTP). Three main WWTP discharge treated wastewater to coastal waters. Four smaller WWTP discharge treated wastewater to land.

6. The DCC’s stormwater system collects rainwater and delivers it to streams, the Otago Harbour or the coast. The system comprises 372km of pipes and 11 pumping stations. In addition to the 3 Waters Group, the DCC’s Transport, Community and Planning, and Building Services Groups contribute to stormwater management in Dunedin through the provision of roading infrastructure and through district plan, resource consent and building consent functions.

7. The DCC Trade Waste Bylaw 2008 regulates the discharge of trade wastes to the DCC’s wastewater system. The Bylaw also includes some provisions to regulate the quality of discharges to the DCC’s stormwater system. The DCC is currently developing a separate bylaw to manage the quality of discharges to the stormwater system.
Dunedin City Planning

8. The DCC notified the proposed Second Generation Dunedin City District Plan (2GP) on 26 September 2015. Decisions on the 2GP were notified on 7 November 2018. The 2GP is currently in the appeals phase, although the parts that are not subject to appeal are now deemed operative.

9. Dunedin is classed as a medium growth urban area under the National Policy Statement for Urban Development Capacity. The population is estimated at 130,700, with annual increases of between 1,200 and 1,900 (1.0 - 1.5%) over the last three years. A Housing and Business Capacity Report completed in January 2019 identified a shortfall in housing capacity of approximately 1,000 residential units in the medium term and 4,500 in the long term, and a shortage of smaller housing typologies. In addition, a report by the Mayor’s Taskforce on Housing identified a shortage of social housing and affordable housing.

10. In response to these issues, Variation 2 to the 2GP was initiated on 12 February 2019 and will make changes to the 2GP to increase residential development capacity. The variation may include identifying new greenfield areas for residential zoning, allowing more housing in existing residential areas, and/or changing rules and performance standards to encourage, or increase the feasibility of, residential development. It is expected that Variation 2 will be notified in approximately April 2020.

11. The proposals in the draft National Policy Statement for Urban Development (NPS-UD) require further long-term planning and changes to the 2GP to ensure Dunedin has sufficient housing capacity and quality urban environments to meet its needs into the future.

EXPLANATORY NOTES ON SPECIFIC REQUESTS

Specific request 1: territorial authority roles in freshwater planning and management

12. The Government proposes establishing, through the Resource Management Amendment Bill introduced to Parliament on 23 September 2019, a process to enable regional councils to put in place regional plans that give effect to the revised NPS-FM by 2025. We encourage the Government to ensure the proposed streamlined planning process restores the ability of territorial authorities to provide input into regional freshwater planning.

13. The DCC supports Te Mana o Te Wai as a national framework for understanding water. However, we are concerned that regional councils are not specifically required to consult with territorial authorities under this proposal, particularly given the significant flexibility of the implementation approach as it is currently set out in the draft NPS-FM. Territorial authorities have a key role to play, particularly with regard to improving urban water quality. Therefore, the DCC requests that consultation with territorial authorities continues to be a compulsory part of the planning process.

Specific request 2: district plans and integrated management of freshwater

14. The DCC supports the concept of integrated management of freshwater and the requirement for territorial authorities to include objectives, policies and methods in district plans to address effects of urban development on water. However, we submit that instead of an information note listing possible methods, the draft NPS-FM specifies bottom-line expectations within the clause. This should include the requirement “encouraging the co-ordination and sequencing of urban
growth, land use and development and the provision of infrastructure” currently included in the 2017 NPS-FM. The DCC notes that requiring treatment of contaminants at source may be a matter better dealt with by local authorities through bylaws.

Specific request 5: National Objectives Framework

15. The DCC considers the establishment of appropriate Freshwater Management Units (FMU) and monitoring sites within them are crucial to the success of the National Objectives Framework. However, the draft NPS-FM lacks clear direction on the objective of an FMU and the factors regional councils should consider when establishing an FMU.

16. The draft NPS-FM does not define the process regional councils must follow for formally adopting FMUs (for example, by gazette notice or inclusion in a regional plan), or how changes to a FMU may be made if deemed necessary. The current FMUs for Otago were adopted by ORC resolution.

17. Otago’s FMUs are currently: Clutha/Mata-au, Catlins, Taieri, North Otago and Dunedin Coastal. The Clutha/Mata-au FMU is broken down into five sub-units or rohe. The DCC’s 3 Waters activities have the potential to impact on FMU values in terms of both water quality and water quantity through, for example, discharging stormwater and wastewater (water quality) and taking or damming water for drinking water supply purposes (water quantity). The DCC considers the Dunedin Coastal FMU, which includes the Tokomairiro River catchment to the south of Dunedin, would be significantly more useful for determining and managing the impacts of urban activities and development if it was established on a catchment basis.

18. The DCC supports smaller, catchment-based FMUs, particularly in urban environments with the most impacted water quality. FMUs that are too large may not facilitate effective implementation of the National Objectives Framework. We acknowledge that a catchment-based approach to FMUs would need to allow for breaking large catchments into smaller ones (for example, where a catchment forms a significant part of a region, such as the Taieri River in Otago), or grouping smaller catchments in some circumstances (for example, smaller coastal catchments not impacted by urban development).

19. The number and location of monitoring sites within a FMU are crucial for collecting the information required to inform water quality management. Monitoring data will help inform territorial authorities about the impacts of various activities on urban waterways, and support improvements. We encourage regional councils to consult with territorial authorities about sites that are the most frequently used and would provide useful monitoring information.

20. The draft NPS-FM only requires a monitoring site be ‘representative’ of a FMU, and ‘representative’ of one or more primary contact sites. Using too few monitoring sites poses a risk to the success of the National Objectives Framework, and the flexibility provided in the current draft appears to be such that FMUs could have only a single monitoring site. Monitoring sites should, at minimum, represent all FMU features (listed at section 3.6, draft NPS-FM, being primary contact sites (or areas), habitats of threatened species, outstanding waterbodies and inland wetlands,) and values (identified at 3.7) such as drinking water or mahinga kai. Monitoring sites should also be located to allow a reasonable assessment of a catchment to establish significant differences that occur between the headwaters of a catchment and its mouth.

21. Section 3.13 of the draft NPS-FM requires every regional council to establish methods for
monitoring progress towards achieving target attribute states and environmental outcomes. The DCC considers these provisions of the NPS-FM should provide more guidance on how to establish a monitoring regime to support national consistency.

**Specific request 6: specified monitoring of FMUs**

22. The DCC is uncertain whether the FMU monitoring programme proposed in the draft NPS-FM would replace the current State of the Environment Monitoring regime, as the draft NPS-FM does not specify who should undertake the FMU monitoring. The DCC considers, given all the potential inputs and impacts on water quality within a particular FMU, that it is most efficient if a single party undertakes the monitoring. The DCC suggests regional councils are the most appropriate party to perform this function.

23. To support the regional councils in this role, consent conditions could require consent holders to make financial contributions towards monitoring where their activities may adversely impact freshwater quality within a FMU.

**Specific request 7: potential impacts of proposed measures to protect streams, wetlands and fish passage on provision of infrastructure services for communities**

24. Measures proposed in the draft NPS-FM and draft Freshwater NES seek to avoid any further loss of streams and wetlands, and to protect fish passage. Whilst generally supportive of the intent of these proposals, the DCC is concerned some of the measures proposed may have significant impacts on the ability of territorial authorities to provide the following infrastructure services for communities:

a. management of urban stormwater systems in a manner that minimises risks to people, property and the environment;

b. spatial planning approaches that facilitate infill development in urban areas;

c. roading; and

d. landfills.

**Watercourses and stormwater management in urban Dunedin**

25. The DCC manages stormwater runoff from roads and communities through a combination of pipes and watercourses, in both public and private ownership. The following is a brief summary of stormwater management issues relating to watercourses in Dunedin:

a. Construction of Dunedin’s stormwater system commenced in the 1860s, centered around natural drainage systems. From 1900, Dunedin’s drainage arrangements were provided for by the Dunedin District Drainage and Sewerage Act 1900. The 1900 Act was repealed by the Local Government Act 2002.

b. Significant lengths of watercourses are now piped beneath roads and built-up areas, across multiple land parcels. They may have been realigned. Piped systems may discharge into open systems, before entering piped systems again. Watercourses often meet the RMA definition of ‘river’, and the pipes within them are on the ‘bed’ of the river.
c. Changing weather patterns and development have changed flows. Many piped watercourses are now undersized and in poor repair, while open watercourses can be blocked by debris and vegetation. Secondary flow paths have not been formally established. Landowners do not have a duty to increase watercourse capacity to carry higher flows.

d. As Dunedin’s infrastructure ages, the frequency of problems associated with watercourses is increasing. There has been flooding, property damage, land instability and risks to public health and safety.

e. Solutions require a catchment-based approach and specialised engineering skills, and can be costly. As the performance of DCC’s stormwater network is dependent on the performance of these watercourses, the DCC is investigating solutions.

26. The DCC acknowledges that in some instances re-opening piped systems may be an appropriate way to manage flows, however, given the history and current form of the stormwater system, this would not be appropriate in all circumstances.

27. The DCC needs to be able to continue to manage its stormwater network responsibly to minimise risks to people, property and the environment posed by flooding and erosion, including through piping or diverting watercourses in some cases. Indeed, the Government’s proposal to introduce new risk management planning requirements for stormwater service providers – which the DCC strongly supports – looks likely to increase obligations on stormwater service providers to demonstrate responsible management of risks to people and property as well as the environment. In addition, the DCC is working to achieve the “compact city” objective of Dunedin’s Spatial Plan by facilitating infill development in existing urban areas. In some cases, piping of watercourses may be required as part of stormwater drainage or earthworks arrangements needed to facilitate infill development.

28. There appears to be some provision for addressing flooding and drainage within the proposal. However, as drafted this does not address the DCC’s concerns:

a. The draft NPS-FM includes some provision for ‘infilling’ where it is for the purposes of ‘flood prevention and erosion control’.

b. The draft Freshwater NES provides for work around wetlands for the purpose of ‘public flood control or drainage’. The definition of ‘public flood control or drainage’ provided is:

work carried out:

- for flood control or flood protection purposes, by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or

- for the purpose of drainage works by drainage districts, under the Land Drainage Act 1908.

The ORC is the only local authority in Otago with these powers.
Comments on specific measures to protect streams and fish passage

29. There is some inconsistency with the terminology and drafting between the discussion document, the draft NPS-FM and draft Freshwater NES:

   a. The discussion document states: “Remaining streams in urban and rural areas will not be piped or filled in unless there is no other option, for example to provide a crossing”. It also refers to “reclamation”.

   b. However, drafting in the draft NPS-FM and draft Freshwater NES refers to ‘culverting’ and ‘infilling’.

30. In Otago, there is currently a distinction between piping a stream, and enabling a crossing over a stream (in other words, placing a culvert), although both involve a pipe structure. When a pipe structure is placed in a stream, fill is typically placed on top. It is unclear if the proposed infilling rules apply only to reclamation of a stream bed, or if they apply in addition to the proposed culverting rules.

31. Clause 3.16(5)(c) of the draft NPS-FM and clause 18(1)(d) of the draft Freshwater NES provides for infilling as a discretionary activity where it is required for the purposes of flood prevention or erosion control. There is no similar clause allowing the piping or diversion of streams for the same purpose. Diversion or culverting, for whatever purpose, requires “no net loss” of the stream. The proposal does not give guidance as to how offsets or compensation might work. Regardless, it may not be practicable for the DCC to do this in all circumstances where that work relates to stormwater system management.

32. The DCC’s stormwater system employs passive flap gates, particularly at coastal outfalls and outfalls into flood schemes. They prevent ingress from other water bodies into the stormwater network and allow stormwater to be stored to prevent surface flooding. The draft Freshwater NES (at clause 23) proposes classifying the construction of passive flap gates as a non-complying activity. It is unclear whether this would affect maintenance or replacement of existing passive flap gates. The draft NPS-FM appears to favour installation of non-passive flap gates. Non-passive flap gates cost more, and require more maintenance and monitoring. They also have a higher likelihood of failure. To enable the DCC to manage stormwater efficiently and effectively and minimise risks to property, the DCC requests an allowance to seek consent for new passive flap gates in public drainage works, where appropriate, as a discretionary activity, and undertake maintenance and replacement as a permitted activity.

Comments on specific measures to protect wetlands

33. In Otago, only regionally significant wetlands and wetlands above 800m have presently been mapped by the regional council. The DCC supports initiatives to map the locations of other wetlands to facilitate better understanding of how DCC activities may affect them, but considers mapping may take regional councils considerable time and resource to achieve.

34. The draft Freshwater NES provides for some activities around a wetland to occur as a discretionary activity only where they are for the purposes of ‘public flood control or drainage’. As noted above, the definition of ‘public flood control or drainage’ currently included in the draft Freshwater NES does not capture the DCC’s public drainage and related flood-control responsibilities.
35. Roading infrastructure assets such as bridges may be built in or adjacent to natural wetlands, and, historically, some landfills were built in or adjacent to natural wetlands. In addition, the DCC has previously used and enhanced natural wetlands for the purposes of managing drainage, stormwater and flooding. The DCC suggests the Freshwater NES makes allowances for works territorial authorities may be required to undertake in association with these sorts of activities (for example, earthworks or vegetation clearing in and around natural wetlands).

36. The definition of ‘constructed wetland’ in the draft Freshwater NES is limited to those wetlands constructed by artificial means only in a place where a natural wetland does not already exist. The DCC currently employs wetlands that have been engineered and significantly enhanced in its treatment of stormwater and wastewater, but in places where natural wetlands may have existed previously. The DCC recommends the draft Freshwater NES be amended to enable works associated with existing infrastructure maintenance, in and around enhanced natural wetlands.

**Specific request 8: standard wetland monitoring obligation**

37. The draft Freshwater NES proposes a standard wetland monitoring obligation (clause 5) that, for any consent granted (in relation to an activity that may affect a wetland), the consent holder must monitor the condition of the wetland in terms of its extent, vegetation, hydrology and nutrients.

38. The DCC considers, given all the potential inputs and impacts on water quality within a wetland, that it is most efficient if a single party undertakes the monitoring. The DCC suggests regional councils are the most appropriate party to perform this function as part of ‘state of the environment’ monitoring. To support the regional councils in this role, consent conditions could require consent holders to make financial contributions towards monitoring where their activities may adversely impact freshwater quality within a wetland.

39. Should a consent holder be required to undertake monitoring of a wetland, the monitoring should be limited to any effects directly attributable to the consent holder’s activities.

**Specific request 9: proposed Wastewater NES**

40. The DCC welcomes a nationally consistent approach to wastewater management.

41. The DCC acknowledges the potential benefits of establishing bottom lines for treated wastewater discharges, where those bottom lines differentiate between discharges to different receiving environments (for example, freshwater, estuarine, marine and land). However, the DCC is concerned that setting national level wastewater treatment standards or limits that are too prescriptive may not achieve the best outcomes for the environment, and would be inconsistent with the RMA’s effects-based approach. The DCC is concerned that ‘blanket’ limits could lead to over-servicing in some areas (for example, where treated wastewater discharges into a high energy receiving water) and under-servicing of low-dilution or environmentally sensitive areas. There is also a risk that if national limits are set too high, this could encourage the introduction of energy intensive wastewater treatment processes where the environmental benefits may be negligible. It is important territorial authorities and regional councils retain some discretion to balance these impacts, particularly given the need for climate change mitigation.

42. The DCC encourages the Government to instead provide a consistent approach as to how consent conditions should be set to meet the relevant environmental objectives of the local area. This
could include guidance on how to set a range of consent conditions including limits, reporting requirements, environmental monitoring and investigations.

43. The DCC supports a nationally consistent framework for establishing, through consents, bottom lines and targets for wet weather overflows according to the relevant values of the local area and receiving environment. Using this framework, regional councils, drawing on the results of monitoring of environmental and societal impacts, could periodically review and increase bottom line requirements as service providers make improvements towards their overflow targets.

44. With further regard to wet weather overflows, the DCC considers it would be beneficial to agree common terminology to support conversations around change. We have observed a wide variation in terminology. For example, clarity around the term ‘engineered overflow’ would be useful. Does this mean only constructed overflows sited to relieve pressure at specific points on the network, or would it also include the emergency overflows installed at every wastewater pump station?

45. The DCC supports the proposal that the Wastewater NES include approaches for incorporating culturally-acceptable wastewater treatment processes. The DCC acknowledges there may be regional differences in tikanga Māori approaches to acceptable wastewater treatment processes and suggests the Wastewater NES provides flexibility for territorial authorities and other wastewater service providers to work collaboratively with their local Treaty partners to identify solutions appropriate to the tikanga of the tangata whenua.

46. The proposal to introduce a Wastewater NES is part of a broader package of regulatory reforms being progressed through the Three Waters Review. We look forward to continuing discussions with the Government on this matter through the Three Waters Review and following publication of a draft Wastewater NES next year.

Specific request 10: proposed national guidance on stormwater policy and network management

47. The DCC agrees that local authorities across New Zealand could benefit from provision of clear national guidance on incorporating green infrastructure into policy and resource management plan provisions, and on stormwater network design. Useful guidance could extend beyond design matters, but also address issues relating to ownership and lifecycle management of green infrastructure assets.

Specific request 11: regulatory impact analysis

48. Impacts on the ability of territorial authorities to provide efficient, effective and affordable infrastructure services for communities are not addressed in the Interim Regulatory Impact Analysis for Consultation. The DCC notes the Interim Regulatory Impact Analysis for Consultation states that further impact analysis is underway to better understand not only the economic and environmental impacts, but also the social and cultural costs and benefits of the package. We support the Government undertaking a thorough analysis as a full understanding of the proposal’s potential impacts is essential for informed decision making.

Specific request 12: proposal timeframes

49. The DCC considers that such a comprehensive and complex package with three draft regulatory documents (the NPS-FM, Freshwater NES and Stock Exclusion Section 360 Regulations), alongside
proposed National Policy Statements for Urban Development and Highly Productive Land and the Three Waters Review, requires careful drafting and the ability for stakeholders and decision makers to consider all elements of the package as a whole. In the Essential Freshwater package, we have observed some inconsistencies between the discussion document and associated legal documents. We acknowledge getting the details and drafting right can be challenging. The proposal that Ministers make final decisions early next year and for regulations to be in force by the middle of the year is unlikely to provide for the issues raised during consultation to be thoroughly addressed. Furthermore, should some of the DCC’s concerns be addressed, substantial reworking of the proposal may be required and further consultation would be beneficial.