Submission
Action for healthy waterways –
Draft national policy statement and national environmental standard for freshwater management

To: Freshwater consultations
Ministry for the Environment
Via email: consultation.freshwater@mfe.govt.nz

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1. Introduction
Thank you for the opportunity to make a submission. Wellington City Council (the Council) generally supports the draft National Policy Statement and National Environmental Standard for Freshwater Management (NPS-FM and NES-FM). As consultation took place over the local election period, there has not been an opportunity for the submission to be considered by elected members and therefore reflects the views of Council officers.

The Council does however seek changes to the proposals as detailed in this submission.

2. Wellington is facing growth pressures
Wellington city's population is expected to grow by up to 80,000 people over the next 30 years. At the same time Wellington is facing pressure from the realities of climate change, sea level rise and risks from natural hazards. The Council’s ‘Planning for Growth’ programme aims to address these challenges and seeks to ensure new homes, transport networks, infrastructure and services are provided in a resilient and sustainable manner. Wellingtonians want their city to be compact, inclusive, greener and vibrant. These aspirations will be set out in a ‘Spatial plan’ which sets the direction for future development over the next 30 years, and ultimately in a full review of the District Plan.

The shape and form of urban development is a key component of realising these aspirations. The Council and the community’s preferred approach is to facilitate growth in and around the central city and suburban centres. The Council is aware that there is a shortage of urban zoned greenfield land to meet future demand. There is currently only 10-12 years supply of greenfield land remaining in Wellington City. At the same time, Wellington city’s population continues to grow at a rate that
necessitates an element of greenfield expansion in the Upper Stebbings Valley in Northern Wellington. This area was identified as a future expansion area in the Northern Growth Management Framework in 2003 and has the potential to yield between 1600-2500 houses, and provide 8-12 years of additional greenfield housing supply for Wellington City. The masterplan prepared for this area shows how the currently degraded rural environment can be rehabilitated and shaped into a sustainable suburb for Wellingtonians.

3. **The proposals lack awareness and consideration of the necessity of urban development**

The Council considers that as it currently stands the action for healthy waterways package does not sufficiently recognise the realities of growing cities or the reasonable expectations for development within urban areas. Some proposals within the draft NPS and NES will act as a swift handbrake on the provision of infrastructure necessary for the functioning of urban environments. In addition, the ‘one size fits all’ approach to specific activities, irrespective of value or environmental effects will reduce the amount of potential development capacity in areas already identified and holistically master planned in a sustainable manner. The Council is concerned that the future development potential of urban growth areas may be compromised, if not prevented, by a policy and rule framework that sets a high bar and potentially limits the ability to efficiently develop land within areas where growth has been anticipated and expected for some time.

The Council would like to see a higher emphasis placed on the potential for the effects of urban development on waterbodies and sensitive receiving environments can be mitigated through utilising water sensitive urban design (WSUD) approaches. The Council supports WSUD as a best practice approach that balances stormwater management in parallel with ecological and community values and urban design. The Council actively seeks to incorporate WSUD principles into new urban development proposals and there are examples within Wellington city. The Council accordingly supports the requirements of the NPS-FM to include provisions to this effect in the district plan.

The Council is reviewing its District Plan next year and is expecting to draft policies and objectives that encourage developers and landowners to use WSUD. Doing so will help change behaviour, mitigate the potential effects of urban development, and is consistent with the direction that the Greater Wellington Regional Council is moving to for urban developments as well as the Whaitua committee. Wellington Water Limited has recently prepared technical guidelines on WSUD devices from a storm water perspective and the Council expects to incorporate these guidelines in developing District Plan provisions. Furthermore, the Council is undertaking technical work on the feasibility different WSUD devices in a range of locations across Wellington city. The Council notes that the use of WSUD is not a complete solution to the modification of stream networks, and an integrated approach to balancing modification with ecological values is necessary. The emerging practice of WSUD presents an exciting opportunity to share knowledge and innovations across the country to help achieve both ‘quality urban
environments’ as sought by the National Policy Statement on Urban Development (NPS-UD) as well as raising the bar on ecosystem health.

Collectively the package is not well integrated with the Government expectations regarding the NPS-UD, in that it does not acknowledge the social and economic effects of the housing shortage and subsequent increased cost of housing that will result from these freshwater proposals. Areas which have been identified for future urban growth for some time that have been gaining support from local communities through lengthy engagement processes, would now be subject to a stricter regulatory framework. This accordingly will create issues for the Council in giving effect to the NPS-UD and weaken the ability to carefully balance environmental effects to help create quality urban environments.

The Council further notes that NPS-FM implementation timeframes are out of sync with the District Plan Review and three-year Long-term plan cycle. The Council’s Long-term plan sets out the funding priorities for the next 10 years, agreed by the Council after consultation with the community. The NPS-FM requirement for significant urban infrastructure upgrades to be achieved within 5 years will not necessarily be able to be met within that timeframe.

**Recommendations**

- The Ministry recognise that WSUD can mitigate potential effects of urban development on waterbodies and sensitive receiving environments.
- The Council seeks further guidance on resolving conflicting matters in various national policy instruments, particularly the NPS-FM/NES-FM and NPS-UD.
- The Ministry provide clarity about the relationship and hierarchy of the NPS-FM, NES-FM NPS-UD and NPS-HVL.

The Council’s submission therefore focuses on the following proposals:

**NPS-FM:**

- 2.2 (9) - Policies
- 3.4 - Integrated Management
- 3.16 - Streams

**NES-FM:**

- Definition of ‘natural wetland’
- 18 - Infilling bed of river
4. **NPS-FM specific submission points**

2.2 (9) Policies and 3.16 Streams

The Council is concerned by the position of 2.2 Policy 9 ‘there is no further net loss of streams’. This policy position is reflected in the NES point 18, where a non-complying activity status is applied for the general infilling of streams (discussed further below). The Council is similarly concerned by point 3.16(4) and 3.16(5). The direction to ‘avoid’ infilling of streams in Policy 3.16(5) alongside the non-complying activity status in the NES is of particular concern, given the emphasis that case law (i.e. the Supreme Court decision in Environmental Defence Society vs New Zealand King Salmon Company Limited) has now placed on the wording of policies – that is that ‘avoid’ means avoid and the activity should not proceed. While this is tempered with a test of ‘where there are no other practicable methods of providing for the activity’, the Council considers that these proposals are unrealistic, particularly in urban environments, where the modification of streams, including infilling or reclamation, is often a necessary activity to facilitate urban development. Using alternative methods may make the entire development economically unfeasible. This will then create challenges for the Council to meet the required targets for the provision of housing under the NPS-UD.

This rather hard-line position seems at odds with point 3.16(3) which requires application of the ‘effects management hierarchy’ when assessing consent applications particularly where this results in ‘compensation’ for stream loss, effectively functioning as an ‘out clause’. While the effects management hierarchy is supported, the Council is unsure how this is will function in practice.

These proposals assume a ‘one size fits all’ approach that does not recognise the varying levels of value of different streams. A more nuanced approach that seeks to avoid the loss of ‘outstanding’ value streams, rather than all streams is recommended. This would enable a more balanced assessment of the adverse effects and benefits of diversion, culverting and other activities such as infilling, and better provides for integrated management of natural resources. Without recognising the varying levels of value of streams, urban development may be unreasonably constrained by the presence of low value streams, including areas that are already identified for development through structure planning processes.

Further, these proposals do not recognise the potential benefits that urban development can bring to stream health and increasing communities’ connection to and understanding of stream systems. The Council has been actively involved in a structure planning process for a new urban area in Upper Stebbings Valley, which protects and integrates streams into the development as focal points of open space and interaction. To achieve the required amount of development for the proposal to be viable, infilling of some streams of lower value may be necessary. At the same time higher value streams will could be protected and enhanced through measures such as riparian planting. Without undertaking such a balancing exercise, increased public access, resilience, and ecological benefits of these currently privately held streams would not be achieved. The ability to make these balancing decisions
helps ensure that ecological quality of streams is maintained and the completed development contributes to a quality urban environment as described in the consultation material for the National Policy Statement on Urban Development.

**Recommendations**

1. That the wording of 2.2 (9), 3.16(4) and 3.16(5) be amended to recognise that the values of streams differ.
2. That 2.2(9), 3.16(4) and 3.16(5) only apply to streams of ‘outstanding’ value.
3. Recognise that infilling of some streams is often necessary for urban development.
4. Exclude application of these proposals to streams within identified urban development areas.

**3.4 Integrated Management**

The Council supports the requirement of 3.4(4) that local authorities who share jurisdiction over a catchment co-operate in the integrated management of the effects on freshwater of land use and development. Local authorities within the Wellington region already work collaboratively on a range of environmental issues. Land use effects on freshwater are considered through Whaitua committees of which there are five in the region. The Council is represented and works alongside other local authorities on Whaitua te Whanganui-a-Tara which was established in November 2018. This committee is tasked with developing a Whaitua Implementation Programme (WIP) that will outline regulatory and non-regulatory proposals for integrated land and water management. The committee is currently scheduled to report back on their WIP in 2020. The Council also participated in the Te Awarua-o-Porirua Whaitua took four years.

The Council supports the establishment of national ‘bottom lines’ for water management and notes the community’s aspirations for higher standards. How to bridge the gap between those two points would need to be determined through consultation and consideration of the level sought, budget and timeline to achieve it.

The Council does note the halved timeframe for reporting the Whaitua te Whanganui-a-Tara WIP and the pressure that puts on the Committee to complete such a substantial piece of work within that shorter timeframe. We also note the commitment of the Committee to meeting that deadline but suggest that guidance setting out an agreed timeline to develop a WIP would be helpful to ensure deadlines can be met.

The Council notes that through the Whaitua process the 2014 NPS-FM established there is no guidance provided for recommendations that fall outside the Regional Council’s responsibility. Such guidance would be helpful for consistency.
The Council supports the requirement of 3.4(6), for territorial authorities to include objectives, policies and methods in its district plan at next review to avoid, remedy, or mitigate the cumulative adverse effects of land use resulting from urban development on waterbodies and sensitive receiving environments. The implementation timeframe for such provisions is supported so long as this timeframe relates to the notification of a plan change containing these provisions. The Council recognises the value of provisions addressing green infrastructure and WSUD and intends to introduce these through the upcoming district plan review. These provisions would satisfy this requirement of the NPS-FM. The Council seeks to ensure that any further policy development recognises that WSUD may not always be possible in new development due to factors such as topography and soil type (which are particularly challenging in Wellington).

The Council notes that Council functions under the Resource Management Act 1991 are limited in scope and are only one lever available to bring about the change sought.

One issue not yet resolved is the impact on local water supplies, where contaminants from roads for example from brake pads, is washed into streams and pollutes the water. Mitigating or preventing this is outside Council’s scope.

**Recommendations**

5. Retain 3.4(4) and 3.4(6).

6. Clarify that notification of a proposed plan is considered to be the point of implementation for 3.4(6).

5. **NES-FM specific submission points**

*Definition of ‘natural wetland’*

The Council is concerned that land around stream tributaries which has become intermittently wet due to stock disturbance will be captured by this definition. The Council is aware of land around tributaries that because of stock movement has become muddy and provided an opportunity for native wetland plant species to establish. The Council does not consider this type of land constitutes a wetland of any type and is not ‘natural’ as it only exists due to disturbance. In the absence of stock disturbance these areas would revert to their natural stream state. As such the Council seeks that this type of land be added as an exclusion to the definition of natural wetland’ and be clearly defined as a natural stream.

**Recommendation**

7. Include the text below as an exclusion to the definition of ‘natural wetland’

   (d) ‘land around stream tributaries which is only permanently or intermittently wet and supports an ecosystem of plants or animals because of stock disturbance’
18 Infilling bed of river

The Council agrees that a resource consent should be required for the infilling of streams.

The Council notes the use of a discretionary activity status for the activities specified in 18(1) where infilling is for the purpose of restoration, nationally significant infrastructure, flood prevention or where no practicable alternatives exist. However, this approach adopted is ‘one size fits all’ in that it does not recognise the difference in values between streams. The Council submits that this activity based approach should be more nuanced to recognise the differing values and exclude areas that have already been identified for urban development.

The general infilling of streams in the NES-FM is captured by a non-complying activity status. The application of this activity status is opposed by the Council. This activity status is overly restrictive for an activity reasonably expected for urban development and the provision of infrastructure. The Council is concerned that anticipated urban development ‘falls through the cracks’ and a non-complying activity status would apply regardless of the value of the particular stream. This would make entire developments difficult, if not impossible to establish. This could adversely affect the Council’s ability to give effect to the National Policy Statement on Urban Development Capacity and the upcoming NPS-UD. This places excessive restrictions on urban development. A discretionary activity status, as is applied for culverts that do not meet permitted activity standards (which is supported) is instead requested.

Throughout the submissions process on the Proposed Natural Resources Plan for the Wellington Region (PNRP), the Council’s submission requested reconsideration of the non-complying activity status for the infilling of streams and investigation of categorisation of streams and rivers based on their value. These submission points were accepted and a discretionary activity status for the infilling of general streams adopted by the independent hearings panel, and a non-complying status applies to identified ‘outstanding’ value rivers. The Council submits that the PNRP approach represents a recent approach which has been subject to much scrutiny and consideration and should not be undermined by the NES-FM. Furthermore, the draft NES allows local authorities to set more stringent rules than those in the NES and if considered a specific regional issue a regional council is still enabled to pursue a non-complying activity status if necessary.

Recommendations

8. Apply a discretionary activity to the infilling of streams, and apply a non-complying activity status only for ‘outstanding’ value streams.

If the Ministry is not of the mind to make the above change:

9. Add ‘required for urban development in areas identified for future urban development’ as an activity to which a discretionary activity status applies in 18(1).
Additional points

*Groundwater*

The implications for and interactions of the water cycle as a whole also need to be considered. For example, consideration of how contaminants may or may not impact the quality of ground water. This area is not currently well understood and therefore more research to better understand the ecosystem and dependencies on its health or otherwise.

**Wellington Water**

The Council endorses the content of Wellington Water’s submission, as appended to this submission.

**Conclusion**

The Council welcomes the draft NPS-FM and NES-FM and opportunity to provide comment. While broadly supportive there are a number of areas the Council seeks greater clarity and changes as identified.

Further to other discussions, there is an opportunity for the Council’s District Plan review to establish a new standard in the approach to district plans and the Resource Management Act, by moving from a first generation district plan to fourth or fifth generation plan that incorporates recent and emerging best practice.

The Council looks forward to continued active involvement. Should an opportunity to make an oral submission in support of our written submission, we would welcome that opportunity.

Yours sincerely,

[Personal details removed]

Chief Executive