



< Local Councils  
play an active  
role in keeping  
our  
communities  
healthy. >

# Clean Water 2017

Local Government New Zealand's submission to the Ministry for the Environment

28 April 2017

**WE ARE. LGNZ..... 3**

**INTRODUCTION ..... 3**

**SWIMMING AND RECREATIONAL VALUES ..... 3**

    Swimmability targets .....4

    New swimmability attribute for *E.coli*.....4

    Identify swimmable large rivers and lakes in plans .....4

    Monitoring.....5

    Funding to improve freshwater.....5

**TE MANA O TE WAI ..... 6**

**STOCK EXCLUSION FROM WATERWAYS..... 7**

**FURTHER CHANGES TO THE NPSFM ..... 8**

    Substantive changes proposed.....8

    Changes to clarify and remove ambiguity in the 2014 NPSFM.....9

## We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand and Douglas Leeder, Chair Regional Sector, Local Government New Zealand.

## Introduction

Thank you for this opportunity to submit on the Government's proposals in the "Clean Water package." This submission has been prepared on behalf of New Zealand's local authorities.

The package includes four main elements and the submission is structured accordingly:

- i. Swimmability and recreational values;
- ii. Te Mana o Te Wai;
- iii. A national staged approach for excluding stock from waterways; and
- iv. Further changes to the NPS.

The package raises two matters which need to be resolved if aspirations for cleaner water ways are to be realised:

1. The Government's package of proposals points to the need for a "joined up" and comprehensive approach to water. To achieve sustainable supply and quality of water an integrated approach is needed which focuses on the outcomes for water quality and quantity and how to deliver these. Delivery must include the costs, affordability, funding and the regulatory framework.
2. With respect to the regulatory framework, do regional and unitary councils have all the tools they need to set limits, manage consents particularly in catchments that are over or near allocation?

## Swimming and recreational values

There are five key proposals that seek to improve the swimmability of New Zealand's waterbodies:

- Swimmability targets: 90 percent of rivers (nationally);
- New swimmability attribute for *E.coli*;
- Identify swimmable large rivers and lakes in plans;
- New monitoring regime in relation to *E. coli*; and
- Funding to improve freshwater.

## Swimmability targets

LGNZ supports the non regulatory initiative to set swimming targets, as detailed in the Preamble to the National Policy Statement (NPS). Setting this clear target requires councils to set pathways for identifying waterways and waterbodies for improvement. The proposed changes (Policy A5) require regional plans to identify large rivers and lakes and their suitability for swimming and state the improvements needed and the timeframe for any improvements needed.

The principle of swimmability has earlier been supported by the sector – in submissions to earlier consultations.

The point that needs to be made is that regional and unitary authorities are the regulators and as part of this role, limits are set. How swimmability will be achieved in some catchments, for some waterways will be a challenge and funding issues and the economic consequences of inevitable land use change cannot be ignored. Understanding the costs to improving water quality and how this will be funded is essential. This includes investment by the primary sector and also by communities where infrastructure for 3 Waters needs to be upgraded and renewed. The ability to afford this will differ across the country.

## New swimmability attribute for *E.coli*

A new swimmability attribute for *E.coli* is proposed. Shifting to a “swimmable” rather than a “wadeable” objective in the National Policy Statement for Freshwater Management (NPSFM) reflects public opinion.

The current requirement in the NPSFM is to work towards a wadeability standard for all waterways (as a bottom line). The new swimmability targets apply to fourth order streams and larger lakes. However, through regional plans, an objective for human health for recreation will need to be set for all freshwater management units, including the smaller streams, using the proposed attribute table in the NPSFM.

## Identify swimmable large rivers and lakes in plans

Regional councils will also be required to identify (new policy A5) large rivers and lakes in their regional plans and state whether they are suitable for immersion. Freshwater systems are naturally variable and suitability for swimming changes daily. The requirement to identify these waterbodies in plans does not take account of this variability and is likely to cause confusion. Using plans to merely identify swimmability seems misguided – that could be achieved by putting the information on a council’s website. Plans are typically regulatory instruments that set targets and standards against which activities are assessed. Using plans to express aspirational objectives only serves to add content to plans, create inconsistency across plans regarding terminology, the very thing that plans get criticised for.

An alternative requirement that regional councils are required to identify swimming spots that are actively managed for recreation would be more acceptable and less confusing. This would engage the community in deciding which targets should be set where, while directing the public to monitoring data, including Land, Air, Water Aotearoa (LAWA), to find out whether a given swimming spot is suitable for swimming at a particular time. Note however, that all rivers being managed for swimming are not all being monitored.

Councils have noted that the maps showing “swimmability” are not at a scale that is particularly helpful and, more importantly, they contain errors because they do not identify those rivers that are deep enough to swim in. Examples are also cited where a water race drain is included, not suitable for swimming because of its amenity and function. The maps need ground-truthing with local knowledge.

## Monitoring

The shift from a set of guidelines for managing recreational water quality to a prescribed methodology will support objectives around national consistency but will require councils to increase their resources to meet these new requirements. Councils will face significant new obligations for monitoring. Typically, water quality monitoring network is based on monthly monitoring throughout a region, which includes measures of *E.coli*. In addition, recreational water quality monitoring programme typically includes more frequent sampling of river sites over the summer period where swimming takes place, according to the Ministry for the Environment's (MfE) own 2003 protocols.

The redrafted NPSFM requires a high frequency of regular sampling that is regardless of prevailing weather conditions and river flow, with a further increase in sampling intensity should any sample not meet the standard. This will mean a significant increase in resourcing requirements for councils, to deliver a 7-days per week monitoring programme.

Environmental data shows a strong association between *E.coli* concentrations and wet weather and higher river flows (times when it is highly unlikely that people will be swimming and potentially dangerous). The NPSFM amendments will require additional sampling to be undertaken at times when conditions are not suitable for swimming. This will require a high level of additional resource and serves little purpose or community good.

Part of the issue is that the new monitoring methodologies in Appendix 5 of the NPSFM overlap with the Government's 2003 Microbiological water quality guidelines for marine and freshwater recreational areas. These guidelines are currently used for surveillance monitoring of swimming sites.

If Appendix 5 is not removed and all sites used to inform the model are deemed to be "swimming sites" this will have a significant impact on regional councils' monitoring resources.

The new requirement will mean weekly, or potentially daily, monitoring at sites through the reaches of swimmable rivers and in some freshwater management units and if this is not done in the marine area, will only create an imbalance between marine and freshwater resources for no obvious reason if swimmability is the objective. This increased obligation to monitor will create issues for councils' monitoring resources, and would require an increase in on-call staff to deal with daily monitoring following any breaches of the 26 *E.coli*/100ml action level. The Government should explicitly acknowledge this as there will be rating and charging implications for permit holders.

Clarification is sought on what the monitoring requirements will be for smaller streams that do not have a fair or above swimmable state, but the cost could be very high, as they may well breach the 260 *E.coli*/100ml criteria regularly.

Monitoring approaches need to be pragmatic and risk based. For example, it is not a sensible use of the monitoring resource to monitor a large river in a wilderness area that might see two visitors per year. Depending on the outcomes of discussions, consideration will need to be given to mechanisms for councils to account for increases in monitoring costs.

In some circumstances a water body is less valued for swimming than it is as a habitat for indigenous species, especially birds. This may include some shallow and landlocked lakes and some rivers. It should be a matter for a council's and a community's local decision-making about meeting swimmability targets in those water bodies.

## Funding to improve freshwater

LGNZ welcomes the Government's Freshwater Improvement Fund. Councils have raised the concern that the eligibility criteria are too narrow and have excluded waterbodies that are in fact vulnerable due to, for example, nutrient loads and sedimentation and are not currently "swimmable."

Focus needs to be put on cost, affordability and funding. How to fund 3 Waters infrastructure, in particular maintenance and renewals, to achieve an improvement in water quality has long been an issue. The limitation for local government in raising its revenue from property taxes (rates) constrains the ability to invest in the infrastructure we need.

LGNZ members, at their 2015 conference, called on the Government to reintroduce the water and wastewater subsidy schemes. The now discontinued schemes funded many water and wastewater projects but the need for financial assistance from the Government has not diminished. Given the focus on improving water quality and the contribution of 3 Waters infrastructure to this, schemes such as this need to be reconsidered.

## Recommendations

LGNZ supports the shift to swimmability as defined in the NPSFM as safe for human immersion but seeks:

- Consideration of how this will be achieved including funding to improve water quality;
- Further consideration of the best approach to identifying large rivers and lakes in their regional plans and whether they are suitable for immersion;
- Clarify how the new monitoring requirements sit with the existing 2003 Microbiological water quality guidelines for marine and freshwater recreational areas;
- Clarify whether it is only swimming sites currently identified in a regional plan that require monitoring and how this interacts with the requirement in the NPSFM to identify and monitor at sites in each Freshwater Management Unit (FMU) that are representative of the FMU;
- Allow for exceptions to the swimmability targets where a waterbody is more valued for aquatic ecosystems and species (especially native birds);
- Move clause CA2(f)iaaab to clause CA2(d) as “(ii) for large rivers and lakes, identifying the current attribute state as shown in Appendix 2 for *E.coli* and what measures are required to increase the time they are suitable for immersion if necessary;
- Explore mechanisms for regional councils to account for an increase in monitoring costs; and
- Reconsider the criteria to identify vulnerable catchments (and therefore eligibility for the Freshwater Improvement Fund).

## Te Mana o Te Wai

The proposed changes to the NPS-FM seek to clarify the status and meaning of Te Mana o Te Wai and provide clear direction on how to recognise it when implementing the NPSFM through regional plans.

This includes a purpose statement which provides context about the meaning of Te Mana o Te Wai, and its status as the underpinning platform for community (including tangata whenua) discussions on freshwater values, objectives and limits. The new overarching objective will clearly require councils to approach all other objectives and policies according to Te Mana o Te Wai, and additional policies to provide additional direction about how to implement this objective.

The proposed amendments support the work underway across local government and give the clarity needed.

LGNZ supports the proposals which:

- seek to clarify the status and meaning of Te Mana o Te Wai and provide clear direction to regional councils on how to recognise it when implementing the NPS-FM through regional plans; and

- introduce Te Mana o Te Wai as an overarching framework.

## Stock exclusion from waterways

The Government has previously signalled its intent to require the exclusion of livestock from waterways and the document outlines a proposed framework for achieving national direction in a regulation. LGNZ has previously supported this intention in other submissions and continues to support a national approach to regulating exclusion of stock.

An increasing number of regional plans have rules that restrict livestock access to the beds of surface water bodies and these rules generally align with the Dairy Accord. Typically, the approach and the timeframe plans have only been reached after considerable debate with stakeholder groups and the community over several years. LGNZ considers that national requirements will be more efficient in addressing the issue. It is essential that councils can put in place more stringent restrictions where considered necessary or desirable. LGNZ strongly supports this provision.

If the regulation is to proceed, LGNZ supports the proposed regulation which provides for an alternative option of using a 'stock exclusion plan' approved by the regional council when stock exclusion as per the Regulations is not feasible. This approach is supported as it avoids the need for a resource consent, and instead supports the use of good management practice and allows for the Council and landowners to work together to find practical solutions.

Further, the new infringement regime elevates the significance of the effects of stock in waterways considerably beyond any section 15 infringement with a maximum infringement fine of \$2000 as compared to \$1000 for any others. LGNZ suggests that the deterrent effect of infringement fees be considered across all contaminant discharge and land use activities in a more consistent way.

The matters that need to be worked through regarding the stock exclusion plan are as follows:

- Scale: is the plan a new property scale operational plan or would fit into a comprehensive farm environment management plan.
- Enforcement of the plan: monitoring and enforcement should be developed jointly by primary industry groups and councils as part of industry audited self-management.
- Status of stock exclusion plan: if the stock exclusion plan is not a resource consent instrument, it is unclear what it is. If it is not a resource consent then how will a council recover processing and/or monitoring costs.
- Consistency of approach with other regulations: the NES for Plantation Forestry will rely on slope as a factor for erosion susceptibility classifications. The potential for the same/similar tool could be explored.
- Uncertainty re terminology: the reference to 'stock units' in waterways creates added uncertainty around interpretation and compliance

The proposal classifies different timeframes for stock exclusion based on slope according to the national Land Resource Inventory (LRI) slope dataset. This dataset is at a 1:50,000 scale and in the proposal is split

into three topographies (plains, rolling land and steeper land). There are potential timeframe implications, implementation issues and costs for councils around the use of the LRI dataset and further investigation and clarification is needed as to what scale is appropriate for use at the farm level.

There are issues around implementation that need to be considered, including:

- How to address inconsistencies between LR1 slope class (mapped at 1:50,000 scale) and actual slope in a paddock (typically at finer scales).
- How a multi-slope paddock will be treated – will the most restrictive slope will apply or will the farmer have a legitimate defence by saying that the animals got into the stream via the least restrictive slope class.
- How much of the paddock needs to be in a particular slop class?
- Whether it is the intention that councils will need to undertake a plan change to identify plains, rolling or steep land especially with reference to slope and the management for different classes for stock? If this is the case, it is unlikely to be nationally consistent. To avoid this, the regulation should cover this through an external reference document such as LRI or Soil Map (S-Map).

LGNZ supports the recent inclusive approach that has been taken to the drafting of regulations – whereby exposure drafts are shared and teste d with councils to test workability and identify any ambiguity in drafting etc. LGNZ hopes this approach is taken with the new regulations for stock exclusion.

## Recommendation

While LGNZ has supported the concept of a national approach to stock exclusion, the current proposals clearly require further considerations and a more nuanced and targeted approach is required:

- Stock exclusion required where break feeding, mob stocking and feed lots (to be defined) of sheep, deer, pigs or cattle by 2022
- Stock exclusion required for all water bodies not meeting NOF bottom lines (and as identified through NPSFM implementation) for ecosystem health – no slope distinctions
- Stock exclusion required for all wetlands, lakes, and coastal areas and any river subject to a WCO, and its tributaries.
- Retain the stock exclusion plan – with further refinement as to what it entails, if it is not a ‘resource consent’.
- Ensure infringement fees are consistent with level of deterrent required for any discharge/land use activity affecting water bodies.
- All regional council to include stock exclusion policies and rules as part of NPS implementation (including meeting ecosystem health needs and swimmability targets)

## Further changes to the NPSFM

There are a number of other proposals to amend the NPSFM. Some are substantive and others are intended to provide greater clarity to councils as they implement the NPSFM.

### Substantive changes proposed

There are three areas of substantive change:

Swimming and recreational values: “Secondary recreation” has been removed as an attribute (as discussed above)

- Macroinvertebrates: It is proposed that councils be required to monitor macroinvertebrates as part of their assessment of ecosystem health.
- Managing nitrogen and phosphorus: Councils will be required to set in-stream objectives for dissolved inorganic nitrogen and dissolved reactive phosphorus as part of their approach to managing periphyton.
- Monitoring and reporting requirements: The scope of regional council monitoring plans has been extended to include freshwater accounting, Mātauranga Māori, and the health of indigenous flora and fauna.

### Changes to clarify and remove ambiguity in the 2014 NPSFM

A number of amendments are proposed to help with clarification and remove ambiguity. LGNZ supports these proposed amendments.

- Te Mana o te Wai: Sections have been reworded to clarify what Te Mana o te Wai means and its influence on decision-making.
- Maintain or improve water quality: The proposed new wording clarifies that water quality should be maintained or improved within a freshwater management unit, rather than the region. LGNZ supports this clarification.
- Economic wellbeing: The affordability of measures to improve water quality must be a consideration in deciding how ambitious targets to improve water quality should be. LGNZ supports the proposal to include this in the NPSFM framework.
- There are nonetheless some issues around the extent to which the NPS mentions economic well-being. It already contains reference to economic implications and any plan change is still subject to section 32. The NPS and its implementation must be as per the sustainable management purpose of the Act and even further references to economic well-being seem unnecessary, create further complexity and result in potential inconsistencies with the RMA and internal confusions in the NPS.
- The various (and variable) references to economic well-being in Obj A2, B1, CA2(f) be deleted. If any reference is still considered necessary, CA2(v) could have further text added.

### Other matters

Regional councils need to manage, through their plans, attributes that are not currently included in Appendix 2 of the NPSFM. This includes sediment, copper and zinc. The national framework should provide narrative objectives for those contaminants that can't be set numerically.

For some catchments in New Zealand, sediment is the largest water quality problem, results in adverse effects in fresh water. There are four potential sediment attributes and work should continue on these, while signalling that it may introduce new requirements for sediment in the medium-term.

Copper and zinc are heavy metals commonly found in urban stormwater and in rural waterways (originating from a different source). In urban waterways, these heavy metals are managed through stormwater infrastructure and treatment and some point source controls. Copper in vehicle brake pads is a major contributor to the current load in some places and local government does not have the ability to control sources associated with motor vehicles. Another significant contributor of heavy metals is zinc from roofs. Local authorities are not able to manage this source as the building regulations are set nationally not

locally).

MfE should provide direct support to councils to encourage local objectives to be set for copper and zinc in relevant FMUs. In parallel with this, LGNZ recommends:

- More work should be done to better understand the nature and size of the copper and zinc problem across New Zealand, especially outside.
- Central government should investigate regulating vehicle brake pads.
- Central government should investigate regulating building materials with respect to controlling sources of heavy metals.