Submission to the Ministry for the Environment

Proposed National Policy Statement and National Environmental Standards for Freshwater

October 2019

Objective ID: A10912231

Introduction

1. Tauranga City Council (TCC) welcomes the opportunity to submit on the Ministry for the Environment's (MfE) proposed national policy statement (NPS-FW) and national environmental standards (NES-FW) on freshwater. We are happy to discuss our submission further with you or provide additional information and evidence that would be of assistance. General enquires should be directed to:

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3. This submission is supplementary to the joint submission developed with Bay of Plenty Regional Council, Western Bay District Council, Whakatāne District Council and Kawerau District Council. It should therefore be read in conjunction with the joint Bay of Plenty councils' submission.

4. Rather than responding to each of the questions in the discussion document, TCC has chosen to focus on our key issues and challenges. These are generally linked to one or more of the questions in the discussion document.

5. Some of the following discussion focuses on proposed changes to freshwater management and implications for urban growth. To illustrate these points more clearly, two future growth areas in Tauranga (Tauriko West and Te Tumu) are used as case studies to demonstrate implications arising from the proposed changes. This information can be found in Attachment A.

TCC supports in principle the intent of the proposed changes for freshwater

6. TCC supports the general intent of the proposed objectives and policies of the NPS-FW and wider freshwater package that is proposed. We agree that local government has a shared responsibility with all New Zealanders to ensure the health of our freshwater and to protect and restore our waterways.

7. We agree that the current framework for managing freshwater is lacking and a more holistic approach to freshwater management is needed to stop further degradation and to reverse past damage of our freshwater resources.

8. As such, TCC supports inclusion of a fundamental concept underpinning freshwater management in New Zealand, such as Te Mana o te Wai. We do, however, request that MfE clarify the alignment of Te Mana o te Wai to enable better consideration of competing priorities. A particular concern for TCC, in relation to Te Mana o te Wai and the draft NPS-FW and NES-FW more broadly, is the potential to unduly constrain new urban growth areas (UGAs) that are needed in Tauranga.

9. While TCC supports the protection and restoration of our waterways, it is also acutely aware of the implications of the Supreme Court's decision in *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38. The effect of *King Salmon* is that Part 2 of the Resource Management Act 1991 (RMA) has limited relevance when giving effect to national planning instruments (such as the NPS-FW) in the context of a proposed plan or plan change.

10. The Supreme Court also found that the requirement to give effect to a policy which is framed in a specific and unqualified way may be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction. Where policies are expressed in clearly directive terms (e.g. "avoid" or "protect"), a decision-maker may have no option but to implement them. In short, such policies become "environmental bottom lines" leaving little scope for the exercise of discretion. Subsequent Court decisions have of course followed this approach.

11. TCC therefore cannot emphasise enough the care that must be taken to ensure that requirements for "protection" are appropriately qualified and balanced with "enabling" provisions. Unqualified use of directive and prescriptive language should be proportionate to the values at issue. This is particularly important for new UGAs which may include waterbodies with differing levels of significance. There is real potential for new UGAs to be unduly constrained if policies directed at "protection" are expressed too broadly and without qualification.

12. These potential issues are not limited to new urban growth. The use of directive and prescriptive language could also impede existing infrastructure which serves existing growth, for example wastewater discharge consents which require renewal after a maximum of 35 years. There may also be implications for matters such as urban intensification, new infrastructure, housing affordability and economic wellbeing.

13. These issues, particularly for new urban growth, are addressed in more detail below in relation to specific provisions in the NPS-FW, such as the 'effects management hierarchy'.

14. TCC welcomes a clearer framework that ensures this finite resource is maintained for the benefit of future New Zealand.

Context for TCC submission

15. The following background information on TCC's growth issues and challenges with land capacity are provided as context for this submission. These issues are not unique to Tauranga. Similar issues are faced in other parts of New Zealand.

Tauranga City Council is a high-growth Council

16. TCC is a 'high-growth' council. It is New Zealand's fifth-largest city and is growing fast. Currently, over 140,000 people call Tauranga home. Our city is projected to grow to almost 200,000 people by 2063. This is all occurring in a small harbour landscape with many physical constraints.

17. As a council, TCC experiences a number of key challenges and competing priorities. For example, significant urban development pressures, a lack of housing supply, natural hazard considerations

and substantial transport issues to name a few. Such competing issues require careful consideration and balance throughout the planning process.

18. In 2004, SmartGrowth was established to address growth issues in the sub-region. With our partners, TCC started to plan for future growth in a sustainable and coordinated way. More recently, the 'Urban Form and Transport Initiative' (UFTI)[1] builds on the successes of SmartGrowth to develop a vision and plan for the next 50 years. UFTI aims to develop a long-term, integrated masterplan for urban development and transport that aligns with the government's new transport policy statement and urban growth agenda.

Challenge with development capacity

19. The supply of land and infrastructure to support growth is a high priority for our city.

20. During the next three years there will be an undersupply of around 1,000 homes. The development shortfall is expected to increase in later years – up to 6,000 homes in total over the next 10 years if more supply is not enabled. Several factors are contributing to this. They include natural hazard risks, RMA timeframes for zoning changes, dependence on landowners releasing land, dependence on state highway planning, funding and delivery and differing views amongst Maori land owners.

21. The issue is compounded by changes in legislation, such as repeal of the Housing Accords and Special Housing Areas Act 2013. TCC have been working with central government and NZTA to develop responses to address these issues in a manner aligned with the government's urban growth agenda.

22. To help resolve these housing supply challenges, we are finalising structure plans on greenfield areas for the Te Tumu (7-8,000 homes) and Tauriko West (3,000 homes) new communities. Te Tumu is facing substantial risks and delays outside of Council's control associated with Maori Land and Maori Land Court matters.

23. TCC has also been looking at ways to accommodate growth in existing areas through intensification to complement the planning of greenfield areas such as Te Tumu and Tauriko West (Refer Attachment A for detail). In this regard spatial planning and plan changes are underway to support terraced housing, apartments and other more intensive residential housing typologies across the city. However, there are real constraints in much of Tauranga to going 'up' such as:

    a. Climate change, flooding and earthquake shaking risks across most of the coastal strip from the Mount to Papamoa;

    b. Private covenants on land titles that prevent further subdivision and intensification in most subdivisions built from the 1990s (approximately half of Tauranga's urban area)

    c. The predominance of rear lot infill subdivision that has occurred over the older part of the city which has created highly fragmented land ownership and increased the value of capital improvements that need to be written off to enable redevelopment as well as increasing the complexity of assembling sufficient land area to enable development to occur at a reasonable scale

1.

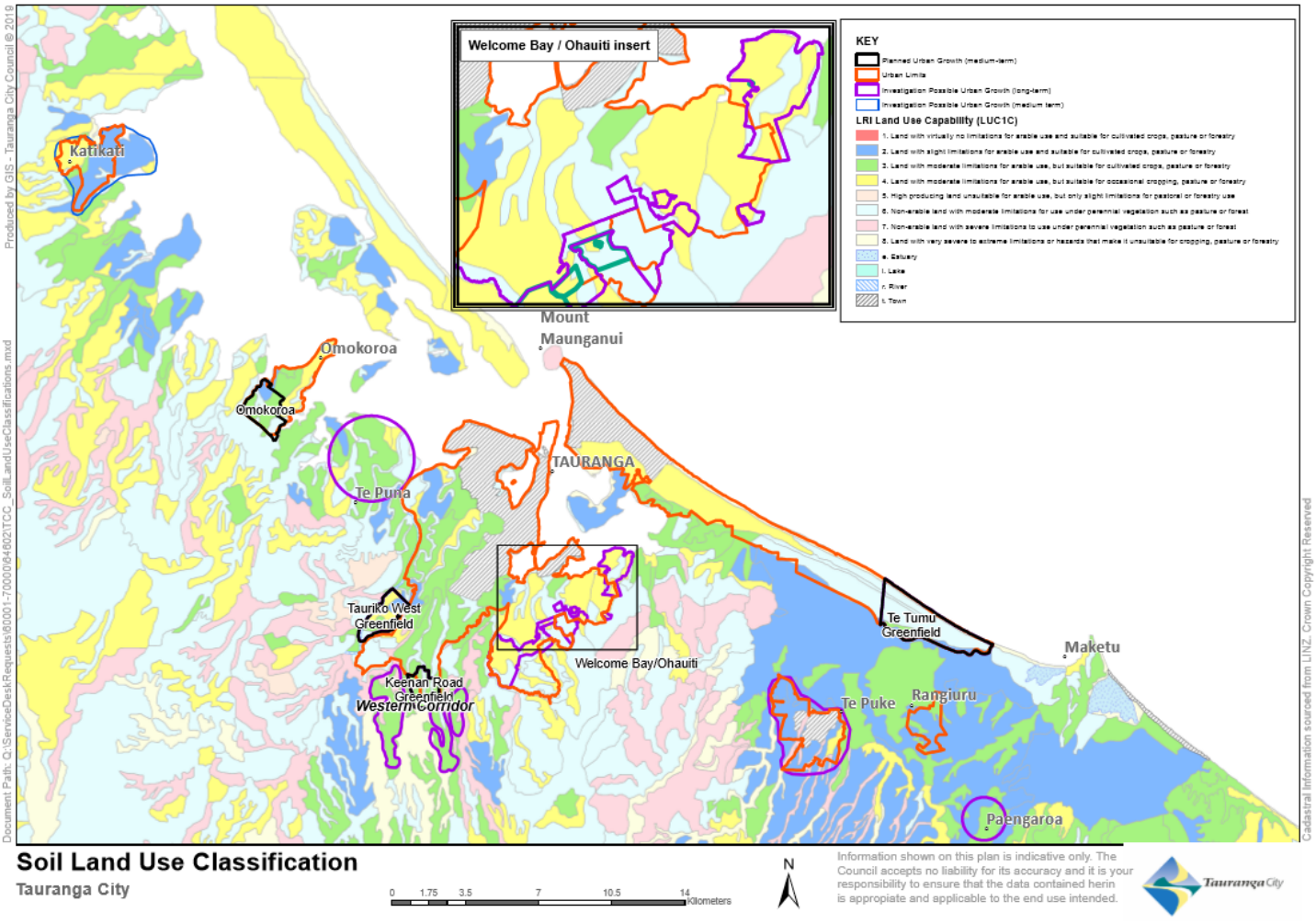
[1] refer to https://ufti.org.nz/ for further information about the Urban Form and Transport Initiative

d. The lack of any large-scale brownfield sites available for redevelopment

e. Challenges around the current development economics from a funding and profitability perspective for the property development industry.

24. For these reasons, if Tauranga City is to continue to grow, to accommodate our population projections and meet the requirements of the National Policy Statement on Urban Development Capacity (and the proposed National Policy Statement for Urban Development (NPS-UD)), it must continue to grow outwards as well as upwards. Figure 1 illustrates the planned and potential urban development areas for Tauranga, including Te Tumu and Tauriko West – the two case studies discussed below.

Figure 1: Map of Tauranga city showing land use capability classifications and planned and potential urban development areas



Identification of key issues with the proposed changes to freshwater management

25. We acknowledge that there will be a range of challenges for both growth and non-growth councils relating to the protection of freshwater resources, waterways and ecosystems. This submission, however, focuses on freshwater issues relevant to Tauranga City.

26. The key submission points are:

    - Improve the integration of NPS-FW on freshwater, urban development and highly productive land to clarify competing priorities
    - The need to balance Te Mana o te Wai with competing priorities
    - Greater recognition for the development of strategic growth areas
    - Clarification of integrated management promoted by Policy 3.4
    - Further improvements needed for the 'effects management hierarchy'
    - Policy 8 and 3.15(2) of the NPS-FW should be amended to refer to 'no net loss' and ideally provide for an increase in values and extent
    - Clarification that effects on any stream may be offset by enhancement/establishment elsewhere
    - Ephemeral river/streams should be defined and excluded from the definition of a river/stream, and a definition of an ephemeral wetland is required
    - Clarification of earth disturbance provisions in the NES-FW to better provide for urban growth
    - Reconsider the use of the term 'water take activities'
    - Freshwater allocation and the need to ensure a water supply for essential needs
    - Less stringent provisions for restoration and essential activities
    - Further opportunity for consultation is needed.

Improve the integration of NPS-FW on freshwater, urban development and highly productive land to clarify competing priorities

27. A clear direction is set in the NPS-FW through Te Mana o te Wai – that the health of water is the first priority. Te Mana o te Wai involves the hierarchy of obligations, where waterbodies are given priority, followed by the essential health needs of people, and then providing for social/economic wellbeing.

28. With the various proposed national planning instruments for highly productive land, urban development and freshwater, there is the high possibility of tension between the documents in practice. We suggest that further work is needed on the drafting of these proposals to clarify how they relate to each other, as well as existing national planning instruments relating to other matters, and how they are to be aligned, integrated and implemented by local government.

29. This is especially important due to the implications of the Supreme Court's decision in *King Salmon* and subsequent decisions of Courts implementing that approach. As explained above, where directive language is used in national planning instruments, such as "avoid" or "protect", that leaves little scope for councils to exercise broad planning judgement in relation to competing considerations through plan-making processes e.g. when planning for new UGAs.

30. Relevantly, MfE's discussion document on the proposed NPS-UD 'Planning for Successful Cities' states:

- Protecting urban freshwater ecosystems and providing for urban development requires local authorities to balance competing priorities;
- This is an inherent part of environmental management, and will need to be managed by local authorities at a local level;
- National policy statements should be aligned to give clarity on how to balance these matters in urban planning. To do this:
  - Local authorities can identify areas not appropriate for urban development (due to freshwater values);
  - NPS-FW & NES-FW are intended to recognise importance of urban streams and encourage urban design to protect them, while also recognising piping and reclamation may be unavoidable when providing for urban growth;
  - Direction in the NPS-FW intended to ensure decisions about freshwater in urban environments can be made in an integrated way as part of wider decisions about urban form.

31. TCC agrees with the above statements made in the NPS-UD discussion document but note that the intent has not been fully delivered through the draft wording of the NPS/NES- FM.

32. Improving integration of the NPS/NES framework to provide increased clarity and certainty to local government on competing land use and environmental priorities would be highly valuable. Protecting freshwater is one of many competing issues for TCC. Transport, urban growth pressures, natural hazards, and infrastructure provision amongst others are all relevant factors. This is further heightened by Tauranga City's small land area and topographic constraints, along with an escalating population – all putting pressure on our city networks and planning frameworks. Aligning the NPS/NES frameworks to provide clarity about the prioritisation of such issues and achieve a broader balance amongst competing priorities would be beneficial for local government.

Recommendation

33. We strongly encourage MfE to:

    - Further develop this framework in collaboration with Ministry of Primary Industries and Ministry of Housing and Urban Development to clarify the intended relationships between the various national directives.
    - Align the NPS/NES frameworks to achieve broader balance amongst competing priorities.

Te Mana o te Wai and the need to balance with competing priorities

34. TCC generally supports the use of Te Mana o te Wai as the fundamental concept underpinning freshwater management. However, the concept needs to find an appropriate balance between protecting waterbodies and enabling appropriate development to occur in appropriate locations.

35. Te Mana o te Wai is implemented through draft Objective 2.1 which places greatest priority (in all circumstances) on the health and wellbeing of waterbodies and freshwater ecosystems. This is followed by essential needs for human health which in turn is followed by social/economic/cultural wellbeing. The requirement to prioritise the health and wellbeing of waterbodies and freshwater ecosystems does not acknowledge any considerations of degree and there are no qualifications (e.g. significance) in relation to the relative importance of the

waterbodies and ecosystems in question. In short, Te Mana o te Wai, as it is currently framed, does not align with the flexibility which is inherent in the purpose of the RMA, for example it provides little flexibility depending on the waterbodies and ecosystems in question, and social and economic considerations.

36. Additionally, although social well-being is referred to in the Objective, there is no mention of this in the accompanying policies. There is also a general lack of recognition in the draft NPS-FW for the importance of economic wellbeing, and strategically planned UGAs. TCC suggests that this could be better reflected in the NPS-FW as the essential development of land for housing and urban development is significant in terms of providing for peoples' social and economic wellbeing.

37. The NPS-FW requires councils to include provisions in district plans to avoid, remedy or mitigate adverse effects on freshwater that are associated with urban development. To assist with decision making, the NPS-FW could provide clearer direction and greater recognition for strategically planned UGAs.

Recommendation

38. Further consideration is needed in relation to:

    - How Te Mana o te Wai enables consideration of competing priorities.
    - How Te Mana o te Wai aligns with RMA provisions, which provide a higher degree of flexibility.
    - Amending Te Mana o te Wai and the related Objective to provide a higher degree of flexibility depending on the waterbodies and ecosystems in question, and social and economic considerations.
    - Amending Te Mana o te Wai to acknowledge appropriate application of the 'effects management hierarchy' in an urban environment (given the many demands, including the requirement to provide for urban growth).

Greater recognition for the development of strategic growth areas

39. The draft NPS-FW and NES-FW explicitly recognise and provide for nationally significant infrastructure.

40. A particular example is Policy 3.16(5) of the NPS-FW. This requires regional policies and plans to be changed to ensure that the infilling of river or stream beds is avoided, unless there are no other practicable alternative methods of providing the activity, and it is part of an activity necessary to enable the development, operation, maintenance and upgrade of nationally significant infrastructure. Rule 6 of the NES-FW includes standard conditions for nationally significant infrastructure.

41. We consider that strategic growth areas, being those that have been developed and identified in regional policy statements, are equally essential to the social and economic well-being of people and communities, and therefore should be recognised as such. Regionally significant infrastructure also requires particular recognition.

42. To be clear, we are not implying that growth areas should be subject to lesser requirements through the NPS-FW, particularly in relation to streams and wetlands. Rather, that the need to

provide for, and develop, growth areas is recognised and provided for in the NPS-FW and NES-FW as it is for significant infrastructure. This should include an acceptance that the efficient development of urban areas may require modification of streams and wetlands, with consequential greater emphasis on the restoration, enhancement and offset components of the 'effects management hierarchy'.

Recommendation

43. Recognise and provide for urban growth areas and regionally significant infrastructure in the NPS-FW and NES-FW, similar to the approach used for nationally significant infrastructure.

Clarification of integrated management promoted by Policy 3.4

44. The integrated approach promoted by Policy 3.4 is generally consistent with the Bay of Plenty Regional Policy Statement and relevant regional plans. The overall intent of this policy is considered reasonable.

45. However, TCC submits that clarification is needed in relation to responsibilities between district and regional councils. While district councils are in a good position to influence urban development, regional councils have functions under the RMA in relation to the diversion of flows and water quality. Greater clarification as to where responsibilities fall between regional councils and territorial authorities would assist with effective implementation of the NPS-FM.

46. Additionally, subclause (5) relating to regional council inserting the following into its regional policy statement is unnecessary as the requirements on territorial authorities in clause (6) will apply regardless, given that the NPS-FW must be given effect to by a district plan:

> *"District plans must include objectives, policies, and methods to avoid, remedy, or mitigate the cumulative adverse effects of land use on freshwater bodies, freshwater ecosystems, and sensitive receiving environments resulting from urban development."*

47. Clarification that the review of the district plan referred to in subclause (6) is a review under section 79 of the RMA, as opposed to a plan change (such as those to provide for new UGAs), is also needed.

48. Currently, a range of water sensitive design (and similar) urban development methods are identified as an 'Information Note' to section 3.4(6) of the NPS-FW. To provide an integrated approach across all the recently proposed national directions, including the NPS-UD, greater emphasis should be given to enabling and requiring more sustainable approaches to urban development. From an urban stormwater management perspective, we suggest that the information note under subclause (6) should be part of the policy to give it more weight. Note that TCC also recommends changes to the information note that are detailed below.

49. The use of green infrastructure, as referred to in the 'Information Note', inherently incorporates the use of both constructed and natural systems, with the latter often being enhanced to serve a wider function. We note that the use of enhanced natural wetlands is not appropriately acknowledged in the NPS-FW/NES-FW.

Recommendation

50. TCC seeks the following changes in relation to Policy 3.4:

- Amend Policy 3.4 to clarify the responsibilities between regional and district councils in relation to urban development and the diversion of flows and water quality.
- Delete subclause (5) as it is unnecessary.
- Amend subclause (6) to clarify that the review of the district plan referred to is a review under section 79 of the RMA.
- Elevate the water sensitive design considerations in the information note under subclause 6 to be part of the sub-clause of the policy to give it more weight, with the following amendments::

  - The first point should relate to reducing stormwater runoff volumes at source. Regulating impervious area and infiltration are methods. Water reuse is an obvious omission to this.
  - Similarly, requiring treatment of contaminants is a method – the aim should be to reduce both the generation and discharge of contaminants at source – rather than a single method of treatment.
  - The third point requires clarification. It would be better to refer to not urbanising areas where effects of freshwater cannot be adequately mitigated, unless there are over-riding reasons for urbanisation. Alternatively, it could refer to 'managing land use and development, including its location, to avoid effects on freshwater that would result in the freshwater objectives not being met'.
  - We are not sure why a designation is referred to in this point.
  - The fourth point should refer to the 'use of green infrastructure' to better allow for the use of natural assets.

Further improvements needed for the 'effects management hierarchy'

51. The "effects management hierarchy" as defined in Policy 3.15 provides an approach to managing the adverse effects of subdivision, use, and development. TCC supports the concept of the effects management hierarchy but considers that further improvements can be made.

Recommendation

52. TCC seeks amendments to the definition of 'effects management hierarchy' that reflect the following matters:

- The reference to 'where possible' is overly restrictive as almost everything is 'possible' (including not developing urban growth areas). The term 'practicable' is considered more appropriate. This term includes economic considerations that can be taken into account to determine whether an outcome is 'practicable'.
- The meaning of 'compensation' is unclear. It could be intended to mean a financial contribution towards a restoration fund for example. Or it could be referring to off-site mitigation etc i.e. 'environmental compensation'. This should be clarified.
- There is no apparent obligation for offset/compensation, other than for it to be considered. If the intent is to achieve no net loss, the end result should be offset/compensation if all other options are exhausted.

- Guidance is needed on how to apply the policy, in particular the circumstances where offset might be more acceptable than avoidance or mitigation – for example recognition that new UGAs are likely to result in circumstances that require offset.

Policy 8 and 3.15(2) of the NPS-FW should be amended to refer to 'no net loss' and ideally provide for an increase in values and extent

53. TCC supports the concept of retaining (and enhancing) wetlands and streams, particularly as they are susceptible to loss and modification by urban development. Achieving better environmental outcomes for these diminishing natural systems requires strong statutory direction. Notwithstanding this, we consider that the provisions should be amended to enable a more workable approach.

54. TCC therefore generally supports Policy 8 and 3.15(2) but considers that these policies could be better framed to support a 'no net loss' and where possible 'net gain' concept.

55. As currently written, Policy 8 and 3.15 (and associated rules in the NES) provide 'absolute' protection to wetlands, despite Policy 3.15(4) referring to the application of the 'effects management hierarchy'. We support the need to appropriately protect wetlands but consider 'absolute' protection of all natural inland wetlands (regardless of value) to be unworkable in practice, particularly in terms of providing for urban growth. As set out above, this is a particular concern given the strict approach of the Courts as a result of *King Salmon*.

56. The policies do not clearly allow the use and enhancement of a wetland for stormwater management purposes, no matter how well this is done and regardless of the multiple community and environmental outcomes that can be achieved.

57. We consider that the proposed change, together with the application of the effects management hierarchy, will assist in providing for sustainable urban development, multiple community and environmental outcomes, and the application of water sensitive design and green infrastructure in greenfield urban development. The ability to enhance and utilise natural wetlands for urban stormwater management is important for urban growth.

Recommendation

58. Amend Policy 8 and Policy 3.15(2) to promote the concept of 'no net loss' for wetlands, rather than 'avoidance', and incorporate concepts of 'enhancement' and 'net gain' (which are used in the NES-FW).

Clarification that effects on any stream may be offset by enhancement/establishment elsewhere

59. Policy 3.16 sets out provisions in relation to the extent and ecosystem health of rivers and streams. It includes the requirement that "The extent and ecosystem health of rivers and streams in the region, and their associated freshwater ecosystems, are at least maintained."

60. TCC considers that the provisions in Policy 3.16 could be clarified and improved to better enable the offset of effects on streams. While we agree with the emphasis of the effects management hierarchy on avoiding loss and modification, some stream loss and modification is inevitable to enable efficient growth and development. However, in our view the provisions (NPS-FW and NES-FW) are not clear as to how restoration, enhancement and offsetting are given effect to for a particular stream.

61. TCC submits that the clarification of this policy is needed. For example, it is not clear whether the policy would prevent the reclamation of a stream if it was to be replaced by a new stream (in either the same or a different location), and whether improved ecosystem values can off-set the physical extent of the stream that may be lost.

Recommendation

62. TCC seeks that the term 'extent' be clarified in Policy 3.16(1), in particular that this enables offset (reconstructed) streams elsewhere. This may also require a change to clause (3) to clarify that effects on any stream may be offset by enhancement/establishment elsewhere.

Ephemeral river/streams should be defined and excluded from the definition of a river/stream, and a definition of an ephemeral wetland is required

63. We note that the draft regulations for stock exclusion under Section 360 of the RMA explicitly exclude ephemeral streams from the definition of a river. We think this is sensible and should also be applied to the NPS-FW and NES-FW. However, a definition for 'ephemeral stream' should be provided to avoid different interpretations. We also note that the NPS-FW refers to mapping ephemeral wetlands, but does not define them.

Recommendation

64. Add and define 'ephemeral stream' to the NPS-FW and NES-FW as contained in the draft regulations for stock exclusion under Section 360 of the RMA.

Clarification of earth disturbance provisions in the NES to better provide for urban growth

65. The definitions in the NES-FW should align with the Planning Standards.

66. For example, the following definition of 'earthworks' has both included and excluded components, which can be used to determine requirements for resource consent:

> ***Earthworks*** *means the alteration or disturbance of* ***land****, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the* ***land*** *including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of* ***land*** *for the installation of fence posts.*

67. An important amendment to the NES-FW Standards for vegetation destruction and earth disturbance is needed to allow necessary modification (including enhancement) of wetlands to support urban growth. These changes include the removal (or significant narrowing) of the

prohibited activity for 'earth disturbance for drainage' in any part of a natural wetland (not for one of the specified proposes) under rule 14.

68. This rule appears to prohibit earthworks to enhance a wetland for public drainage purposes, which could unnecessarily impede councils' ability to plan for and deliver stormwater infrastructure to cater for new UGAs. In our view, a very high threshold is required before utilising a prohibited activity in an NES. It is difficult to foresee all potential implications at a national level. A more balanced approach, which will achieve the purpose of the RMA, would be to allow the effects of a proposal to be carefully assessed through the resource consent process.

69. The definition of 'earth disturbance for drainage' under rule 9 should be amended to include earthworks to install underground pipe networks and other drainage infrastructure. This will better reflect the scope of activities that may be undertaken for drainage purposes.

70. Development of UGAs may involve the creation of green infrastructure and installation of urban drainage infrastructure such as swale and pipe networks, as well as the enhancement of wetlands. Clarity is sought on which provisions apply to the assessment and consenting of such public works in the vicinity of wetlands. The definition of 'earth disturbance for drainage' under rule 9 appears to be limited to 'drainage ditches' only, and this is not defined in Part 2 but is defined in Part 3 (which relates to farming). In our view, these public drainage related works are therefore considered 'general earth disturbance' and should be a purpose provided for under rule 10.

71. Additionally, the provisions in rule 10 of the NES-FW need clarification. For example, it is not clear what type of consent rule 10 (1) refers to and rule 10 (2) appears to allow more extensive change on water levels / wetlands than under a non-complying activity. Clause (b) is very subjective, and it is not clear what rule applies if clauses (a) and (b) are not met.

72. The rules refer to changes in the annual median and seasonal water level of wetlands. Clarification is sought on the intended application of these rules to temporary activities in the vicinity of wetlands. In our view, the rules refer to the permanent effects of the activity.

Recommendation

73. TCC seeks the following in relation to earth disturbance provisions in the NES-FW:

- The definitions in the NPS-FW should align with the Planning Standards.
- Reconsideration of the use of prohibited activities in the NES-FW.
- Clarification of the NES-FW provisions in relation to earth disturbance.

Reconsider the use of the term 'water take activities'

74. This is a confusing term that amalgamates a range of different activities under the RMA into a single definition and rule, which we consider will be difficult to apply in practice.

75. On a related issue, we consider that the NES-FW is unclear as to the sections of the RMA that the rules relate to. Some appear to be land use rules (presumably section 9(1)) while others appear to be rules under sections 13 and 14. This is important from a planning perspective because it determines important matters such as maximum duration and which local authority has responsibility to consider and determine applications i.e. regional or territorial. The National

Environmental Standards for Plantation Forestry give an example where regional and territorial responsibilities have been clearly delineated throughout.

Recommendation

76. TCC seeks the following in relation to water take activities:

    - Reconsider the use of the term 'water take activities'.
    - Clarify which sections of the RMA the rules relating to 'water take activities' relate to.

Freshwater allocation and the need to ensure a water supply for essential needs

77. In general TCC supports sustainable allocation of water resources and the avoidance of over-allocation. TCC also welcomes the clarification through the hierarchy of obligations contained in the Te Mana o Te Wai principle and in the Objective for the NPS that water for the essential health needs of people (including where this is provided by way of municipal supply) has a priority over other usages.

78. However, TCC would like to point out that territorial authorities have responsibilities under the Local Government Act 2002 and the Health Act 1956, which require them to ensure an adequate supply of drinking water is provided (for domestic and food preparation use and sanitary needs). Hence, TCC argues through its submission and notice of appeal to BOPRC in respect of Proposed Plan Change 9 (Region-wide Water Quantity, to the Bay of Plenty Regional Water and Land Plan) that these essential services have to continue and that territorial authorities can reduce but not cease supply in a case of a severe drought, resulting in low flow situations.

Recommendation

79. TCC seeks clarification of how Policy 7 should be applied in extreme drought situations.

Less stringent provisions for restoration and essential activities

80. A consistent theme of the NES-FW is discretionary activity status for restoration/enhancement and activities associated with nationally significant infrastructure but such activities are otherwise non-complying or prohibited activities. We submit that this approach is too restrictive and suggest that controlled or restricted discretionary activities would help facilitate positive outcomes.

81. On a related note, we are not sure how discretionary and non-complying activities will be determined in light of the limited policies in the NPS-FW.

Recommendation

82. We encourage MfE to consider:

    - A more enabling framework with controlled or restricted discretionary activities for restoration and enhancement activities.
    - Strengthening of policies to provide clearer direction, especially for urban catchments with multiple demands.

Comments relating to specific provisions

83. The following table details specific submission points relating to the NES-FW.

NES provision	Submission point
21 Culverts *Permitted Activity* (1) The construction of a culvert that is fixed in or on the bed of a river is a permitted activity, provided the following conditions for fish passage are met: a) the culvert complies with all relevant rules in the relevant regional plan; b) the culvert provides for the same fish passage as exists naturally in the area of river bed it occupies; c) the mean cross-sectional water velocity in the culvert is equal to or less than the mean cross-sectional water velocity found in immediately adjoining stream reaches; and d) the culvert span is: i. equal to or greater than 1.3 x stream bankfull width for streams with a bankfull width ≤3 m; or ii. equal to or greater than 1.2 x stream bankfull width + 0.6 m for streams with a bankfull width >3 m; e) the culvert is an open bottom culvert or the culvert invert is placed so that a minimum of 25% of the diameter of the culvert is below the level of the river bed; f) the stream bed substrate is present over the full length of the culvert, and it is stable for at least four fifths of the time; g) the culvert provides for continuity of geomorphic processes (such as the movement of sediment and debris); h) the person constructing the culvert must provide the following to the relevant regional council within 20 working days of construction being completed: i. the standard fish passage structure information;	The permitted activity status for culverts is supported. However, permitted activity conditions would require a controlled activity status as drafted. Eg the assessment of cross-sectional water velocity and geomorphic processes are very technical matters to consider. In regard to: 1b - If water velocity is considered then the respective flow rate need to be determined (eg ARI or days per year), as there are limitations on, when this can be achieved. 1di - a width of 1.3 x stream bankfull width is very onerous and will require some very large culverts. The bank full discharge has an ARI of about 2 years. This should be normal/average flow. For small streams: 1e - This is a potential sediment trap and could fill up in short time, reducing the hydraulic capacity and increasing flow velocities. 1f – unclear how this can be designed 1g – this is in conflict with f above.

ii. information on at least the type or shape of culvert (e.g. pipe, box, arch), material, height, width, length, drop height, slope, culvert substrate, and alignment.	
22 Weirs *Permitted activity* (1) The construction of a weir that is fixed in or on the bed of a river is a permitted activity provided the following conditions for fish passage are met: a) the weir must comply with all relevant rules in the relevant regional plan; b) the weir provides for the same fish passage as exists naturally in the area of river bed it occupies; c) the weir fall height is less than 4 metres;	As above, permitted activity supported, but drafted as a controlled activity. It should be noted that under 1d a 4m height weir would require a 120m long ramp. Is that required?
23 passive flap gates (1) The construction of a passive flap gate is a non-complying activity. (2) Any resource consent granted for the non-complying activity must be subject to the following conditions: a) the passive flap gate must comply with all relevant rules in the relevant regional plan; b) the person constructing the structure must provide the following to the relevant regional council, within 20 working days of construction being completed: i. the standard fish passage structure information; ii. at least, the number of flap gates, dimensions, material, and whether any culverts present.	Clarification required that standard only applies to drainage schemes with open channels not stormwater pipe network.
24 Dams, fords, and non-passive flap gates Every person who constructs a dam, ford, or non-passive flap gate must provide the following to the relevant regional council, within 20 working days of the construction being completed,: a) the standard fish passage structure information;	Fords usually should not have drop heights.

	b) for fords, at least drop height, substrate, width, length, material, presence of any culverts: c) for dams, at least height, whether spillway present, whether fish pass present; d) for non-passive flap gates, at least the number of flap gates, dimensions, material, and whether any culverts present.	

Further opportunity for consultation is needed

84. In our view, there are a number of clear inconsistencies and there is often not a clear 'line of sight' from high level objectives and policies of the NPS-FW to the standards in the NES-FW.

85. We anticipate that the detail of the directions will change substantially through the submission process. Additionally, changes proposed will result in significant change for local government – some of them technical and/or complex.

86. Following the outcomes of this consultation, we therefore strongly encourage MfE to integrate a second consultation phase focusing on the content of drafting. This will ensure outcomes and implications from any changes are 'tested' at the local level by those that will be responsible for implementing them.

87. We also consider that there is a lack of 'urban perspective' in the proposed freshwater package. As illustrated below, proposed changes for freshwater management have significant impacts and implications for urban growth. We therefore suggest that MfE further consider proposed changes through an urban growth lens. A new urban growth reference group for freshwater with representation from growth councils would provide a valuable contribution to the policy making process.

Recommendation

88. We strongly encourage:

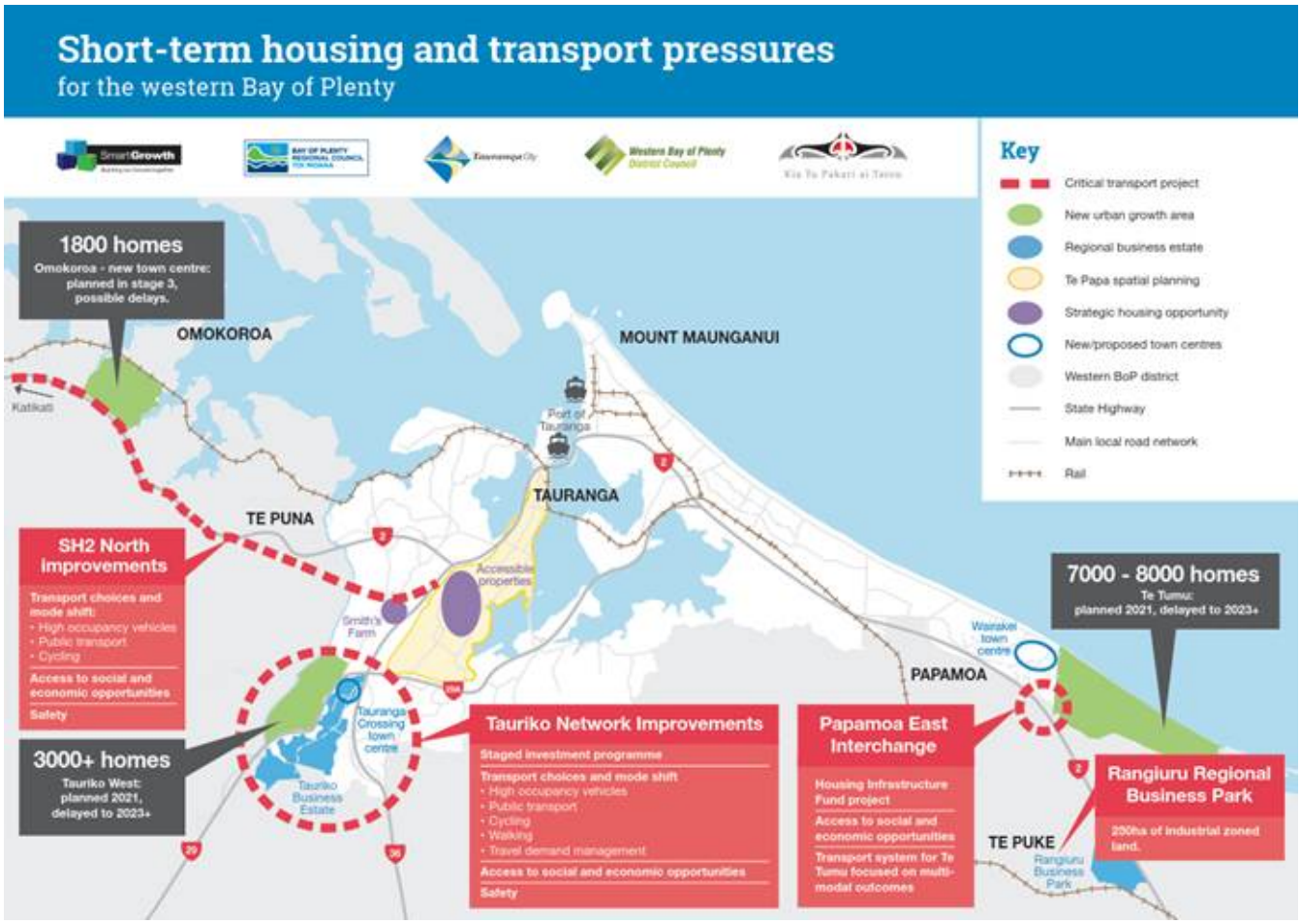
- That a second round of consultation is integrated into the consultation process.
- A new urban growth reference group for freshwater with representation from growth councils is considered.

Attachment A: Implications of draft NPS and NES provisions on Tauriko West and Te Tumu – A case study on new urban growth areas

1. Tauriko West and Te Tumu are two of several urban projects that will deliver new housing capacity in the region over the next 10 years as part of a long-term SmartGrowth strategy. These projects are essential to delivering sufficient development capacity in line with the NPS-UDC and the proposed NPS-UD. Presently Tauranga has insufficient development capacity in the short, medium and long-term, including a shortfall of 1,000 homes over the next three years.

2. Figure 1 below illustrates where these new growth areas are planned, as well as the number of homes to be delivered, the location of business activity and transport improvements.

Figure 1: Map showing location of planned urban development in the western Bay of Plenty



3. For context, a description in terms of urban development and existing water bodies is provided for each case study area. As shown below, there are a range of waterbodies that exist of differing significance and ecological importance. TCC considers that in seeking to achieve balance of meeting growth objectives and protection of natural waterways, the issue of significance and importance of waterbodies must be taken in to account.

4. Descriptions of each case study area are followed by a detailed outline of the implications that arise from the proposed changes, and associated submission points.

Tauriko West

5. The Tauriko West Urban Growth Area is a collaborative project driven by four key partners being Western Bay of Plenty District Council (WBOPDC), Bay of Plenty Regional Council (BOPRC), New Zealand Transport Agency (NZTA) and Tauranga City Council.

6. Tauriko West will provide new housing for more than 3,000 people, with residential development aiming to start in 2023. The vision for Tauriko West is to create a thriving community for locals to live, learn, work and play locally. This means the community will have amenities such as schools, parks, cycle and walkways, access to shopping and community facilities, and transport infrastructure.

7. Building a community at Tauriko West will require changes to the Regional Policy Statement (completed), a proposed boundary alteration between Western Bay and Tauranga City councils (underway), and changes to the transport system and to the City Plan (in progress). All these changes will need to be implemented in accordance with the Resource Management Act 1991.

8. As we are future-proofing this region, we are also drawing on our past. We are committed to embracing Tauriko's rich history and are working together with iwi and the community to protect the environment while creating Tauriko West.

9. Tauriko West is located partially within WBOPDC and TCC jurisdictional areas. A reorganisation proposal has been lodged with the Local Government Commission, which was accepted and was notified, calling for alternative proposals. Alternative proposals have been received and the Local Government Commission is considering those before making a decision. A final decision is expected in 2020.

10. To progress required work programs, TCC is funding the development of a new business case which considers early works opportunities to provide access into Tauriko West (and the continued development of the Tauriko Business Estate). This work is being undertaken by WSP Opus and includes NZTA in that process.

11. The Tauranga City Council continues to progress work on the development of the future structure plan, having key pieces of work underway including the early works package assessments, wastewater assessment and progression of work for a future comprehensive stormwater consent. Work has commenced on the preparation of the RMA planning provisions and appropriate zoning of land for the Tauriko West plan change.

12. Because the Special Housing Area legislation is being repealed there are no expedient means to enable development to commence in Tauriko West. At best we now estimate development will be underway in 2023 well beyond the previous 2021 target.

Existing waterbodies in Tauriko West

13. The proposed urban growth site at Tauriko West is approximately 340ha across rolling hills and low-lying areas. There are three gully/ waterway networks across the site, all of which discharge into the Wairoa River, which flows north along the western boundary of the assessed site (refer Figure 2).

14. Most of the site is currently used for agricultural purposes with small areas of horticulture land use on more elevated land. Agriculture has dominated the land use for at least the past 40 years (likely to have been longer) with only minor discernible changes across the landscape during that period.

15. Ecosystems present over the site include three stream/ waterway networks, small wetlands at the base of some gully heads and low-lying areas, small stands of early succession native vegetation and larger tracts of mostly exotic forest and scrub.

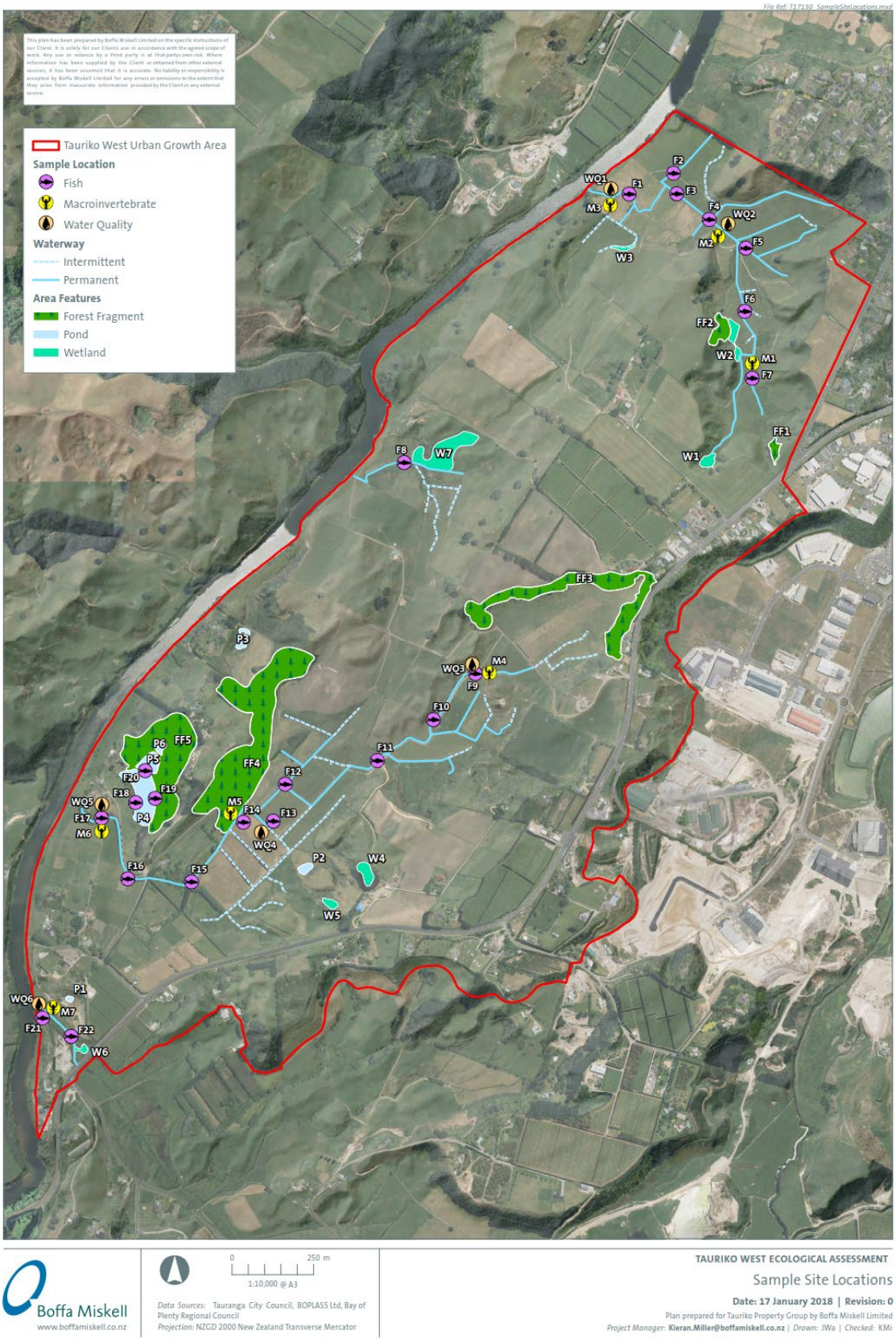
16. The three waterway networks, seven wetlands and forest fragments two and three (western side) are the only features across the site which provide some degree of ecological value.

17. The three waterway networks comprise moderate ecological value. Although the waterways are heavily modified and degraded, each of the networks does contain several native fish species, some of which are classified as at risk.

18. The seven wetlands comprise low ecological value. Wetlands are a threatened ecosystem within Bay of Plenty and across New Zealand. However, the wetlands on site have been modified and degraded by stock and most have a high proportion of exotic pest plants.

19. Although outside of the assessed site, the Wairoa River has high ecological value as the feature provides habitat to numerous species, some of which are at risk / threatened, as well as providing important ecological functions.

Figure 2: Proposed urban growth site at Tauriko West showing waterbodies and water features



20. The following images (Images 13-16) provide examples of streams found in Tauriko West.

Image 11: Straightened channel characteristic of waterways in northern gully network.

Image 12: More natural stream pathway at the downstream end of the northern gully network.

Image 13: Straightened channel reach within the central gully network.

Image 14: More natural stream flowpath at the downstream end of the central gully network.

Image 15: More turbulent stream reach within the southern gully network.

Image 16: Slower flowing stream reach within the southern gully network.

Te Tumu – Papamoa East

21. Te Tumu is a place of great historic and cultural wealth, both for tangata whenua and European settlers, who have lived and worked on the land since the 1800s.

22. Te Tumu is also the location of a project that joins landowners, developers, Tauranga City Council and SmartGrowth to provide new housing and cater to growth in the Bay of Plenty. Councils and landowners have throughout the years considered options for urban development at Te Tumu, as signalled in various planning documents and past developer proposals. Now, Te Tumu is planned to help support the region's future growth, as part of the SmartGrowth strategy. Te Tumu will provide new housing for more than 15,500 people, with residential development aiming to start in 2023.

23. The vision is for Te Tumu to be a coastal community that celebrates its significant history and environmental richness. The proposed developments will respect the Kaituna River and preserve the area's natural character, while building a sustainable community around the planned town centre, employment precincts, schools, sportsfields, walkways and cycleways. Based on our investigations to date, approximately 400ha of the 740ha of land at Te Tumu could be developed. The remaining 340ha would be protected to preserve the natural and cultural history of the area, and protect the community from natural hazards.

24. Council have completed various technical assessments to inform the structure plan. The inputs for the technical reports have been based on three population scenarios to ensure that appropriate infrastructure can be delivered. These three population scenarios range from a base of 15,500 people up to 25,000 people.

25. Workstreams underway include a stormwater strategy; wastewater strategy, provision of open space; transport modelling, including walking, cycling and public transport; and a master plan. These will all inform the structure plan and plan change.

26. Work has commenced on the preparation of the RMA planning provisions and appropriate zoning of land for the Te Tumu Plan Change. Discussions are also underway with landowners in the preparation of funding agreements for the delivery of infrastructure and services within this urban growth area, along with the potential staging of these assets. This includes consideration of potential new funding models being developed by Government agencies.

27. The plan change is subject to the outcomes of Maori Land Court process and engagement with landowners via Trusts. It is more likely that urban development within this growth area will not be enabled until 2023 at best.

28. To prepare for structure planning, investigations into different elements of the area's natural environment have been carried out. In particular, outstanding features and landscapes, character areas and special ecological areas have been investigated. In 2013, the Bay of Plenty Regional Council completed an assessment of the natural character of the Bay of Plenty coastal environment – designed to map areas with high and outstanding natural character. The assessment identified two locations within Te Tumu as natural character areas: part of the open coastal dune system, and the Kaituna wetland. These areas are specifically provided for within the operative Regional Policy Statement. Special Ecological Areas are habitat areas that contain significant indigenous flora and play an important role in sustaining our unique native plants and animals. Our investigations have found these in Te Tumu, located along the open coast dune

system, along the Wairakei Stream and along the Kaituna River. These areas are recognised in the Tauranga City Plan.

29. Structure planning for Te Tumu aims to incorporate these features into development of the growth area. This may include adapting features from their modified rural state, to provide increased ecological value, amenity and recreational opportunities for the urban area. The stormwater management strategy takes a water sensitive design approach, meaning existing low-lying areas are most appropriate for stormwater management, and green infrastructure may be collocated with existing depressions or relic waterbodies. Works are also required in the growth area to provide connectivity of people and infrastructure across the area, and to manage natural hazards including flooding and seismic hazards.

Existing waterbodies in Te Tumu

30. The waterway within Wairakei Stormwater Reserve is a highly modified remnant of the original stream which functions primarily for stormwater disposal, treatment and storage (refer Image A & B). The stream is disconnected from both its original headwaters in the Papamoa Hills and its most recent coastal outlet at Taylor Reserve. The Wairakei Stream stormwater reserve comprises 10km of waterway and a further 4km of connected drains and swales within the residential areas of Papamoa. The waterway is comprised of stormwater ponds connected by drains and open watercourses discharging to two artificial outlets at Harrisons Cut and Grant Place. The stream has little natural overland stormwater flow into the waterway and water level changes are in response to local rainfall, stormwater, and shallow groundwater inputs rather than wider catchment-scale hydrology.

Image A and B: Wairakei Stream channel in Te Tumu

31. Beyond the current residential boundary with the Te Tumu land blocks, the Wairakei Stream channel (refer Image C & D) has a different character to the urban reach. The channel extends some 3.5km through rural damp sand plains towards the Kaituna River before switching back parallel to the coast some 3.6km towards its historic outlet at Taylor Reserve. The relic channel has no natural outlet and little incoming flow except in flood conditions or when westerly winds drive water east. The relic channel is mainly unfenced and some parts are grazed, although grazing is effectively limited by water depth and wetland vegetation dominates most of the channel.

Image C & D: Wairakei channel in Papamoa

The following table provides an assessment of the implications for urban growth areas in relation to the Tauriko West and Te Tumu case studies, including particular submission points where relevant.

NPS / NES Provision	Tauriko West	Te Tumu	Assessment and submission points
Part 1: Preliminary provisions			
1.5 Fundamental Concept – Te Mana o te Wai	Applies generally.		Concept involves the hierarchy of obligations, where waterbodies are given priority, followed by the essential health needs of people, and then providing for social/economic wellbeing. • TCC queries if this prioritised approach adequately provides for social and economic wellbeing in a manner consistent with s5 of the RMA, particularly in relation to urban growth areas (UGA)
Definitions *Note: Only definitions of particular interest / concern included*			
outstanding waterbody means a waterbody identified in a regional policy statement or plan as having outstanding values (such as ecological, landscape, recreational, or spiritual values)	Notes on Regional Council classification of waterbodies in Tauriko West UGA: • The Regional Policy Statement (RPS) shows 'very high' natural character applies to the Wairoa River downstream of the SH2 bridge. • The Wairoa River below the SH2 bridge is identified as an ONFL in the Pre-operative Regional Coastal Plan (RCEP). • Wairoa River is identified on the Natural Resources Plan (NRP) Water Classification Maps for 'Aquatic Ecosystem' purposes. • NRP Schedule 1 identifies the following species in the main body of the Wairoa River: Shortjawed Kokopu (below dam), Giant Bully, Inanga, Redfinned Bully, Longfinned Eel, Shortfinned Eel, Common Smelt, Common Bully, Inanga, Banded Kokopu, Giant Kokopu. (Tributaries may also have other species).	Notes on Regional Council classification of waterbodies in Te Tumu UGA: • Part of the lower reach of the Kaituna River and surrounding land is identified in the RPS as an area of 'high natural character'. • The RCEP identifies areas of Indigenous Biodiversity (IBDA A and IBDA B) within Te Tumu UGA. • The western end of the Wairakei Stream is identified on the NRP Water Classification Maps as 'Modified Watercourse with Ecological Values'. Extent of stream on maps is less than actual stream length. • NRP Schedule 1 identifies the following species in the Wairakei Stream: Shortfinned Eel, Longfinned Eel. • NRP Schedule 2 identifies Wairakei Stream as a watercourse within a land drainage scheme with ecological values (Shortfinned Eel, Longfinned Eel). • Part of the Te Tumu UGA is within the Lower Kaituna Land Drainage Scheme (NRP Schedule 5).	Definition same as NPS FM 2014/17 No 'outstanding waterbodies' identified in Regional Policy Statement or Regional Plans (except ONFL in relation to Wairoa River below SH2 bridge, which is some distance from Tauriko West UGA and unlikely to be of any consequence). The Regional Council may undertake work in the future to classify waterbodies as 'outstanding' in accordance with the NPS FM.
primary contact site means a site identified by a regional council that it considers is regularly used, or would be regularly used, but for existing freshwater quality, for recreational activities such as swimming, paddling, boating, or watersports, and particularly for activities where there is a high likelihood of water or water vapour being ingested or inhaled	Freshwater Bathing Sites (NRP Schedule 10) on Wairoa River are at McLaren's Falls (upstream) and Bethlehem (downstream near SH2 bridge).		Major freshwater bathing sites in the Region are identified in Schedule 10 of the NRP and are monitored for that purpose. Definition is more detailed than that in NPS FM 2014/17 and provides a better explanation. Tauriko West will involve wastewater infrastructure upstream of existing identified bathing site.
stream has the same meaning as river in the Act, and is used interchangeably with that term, as consistent with common usage	RMA definition of a river includes intermittent and permanent rivers/streams, which may include ephemeral stream. The extent to which a stream is defined as ephemeral will impact on the length of stream subject to the NPS/NES and hence required to be retained/mitigated. This would need to be determined for Tauriko West.	Part of Wairakei Stream is identified as a 'stream' in Regional plan. However, may also be considered a wetland.	Under the RMA, ***river*** *means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)* However, there is no definition of what an ephemeral watercourse is and where the transition is between ephemeral and intermittent. Under the BOP Natural Resources Plan the following definitions apply and it is not clear whether these would be retained following the enactment of the NPS:

NPS / NES Provision	Tauriko West	Te Tumu	Assessment and submission points
			Intermittent Watercourse *– A watercourse that: (a) Flows for most of the year or is only dry for short periods of the year, and during such dry periods has stable pools or 'wet patches'; and (b) Has a defined water channel and banks; and (c) Connects with a permanently flowing surface water body; and (d) Provides habitat for aquatic flora and/or fauna species.* ***Ephemeral flowpath*** *– An ephemeral flowpath is where any one of the following criteria are met: (a) The flow path is an entrenched dry gully greater than 1 metre deep. (b) There is clear evidence of a channel within the valley system where overland flow occurs from time to time. (c) There is clear evidence of erosion (such as gullying or headward gully erosion) associated with short term water flow from time to time within the valley system. An ephemeral flowpath excludes the following: (a) A valley that does not show any evidence of overland flow channels, or erosion as a result of overland flow.*
threatened species are taxa that meet the criteria specified by Townsend et al. (2008) for the categories Nationally Critical, Nationally Endangered, and Nationally Vulnerable Species (Andrew J. Townsend, Peter J. de Lange, Clinton A.J. Duffy, Colin M. Miskelly, Janice Molloy and David A. Norton (2008). The New Zealand Threat Classification System Manual, available at: https://www.doc.govt.nz/globalassets/documents/science-and-technical/sap244.pdf.)	Fish species currently identified as 'at risk' have been identified in Tauriko West. However, these do not appear to meet the criteria of a 'threatened species'.		The New Zealand Threat Classification System Manual clarifies that 'At Risk' is a lower order category than 'Threatened' (although in previous versions of the manual 'at risk' was part of the 'threatened' super-category). Note that the treat classification may change over time.
Objective			
The objective of this National Policy Statement is to ensure that resources are managed in a way that prioritises: a) first, the health and wellbeing of waterbodies and freshwater ecosystems; and b) second, the essential health needs of people; and c) third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.			TCC generally supports the use of Te Mana o te Wai as the fundamental concept underpinning freshwater management. However, the concept needs to find an appropriate balance between protecting waterbodies and enabling appropriate development to occur in appropriate locations. This hierarchy is also not clear in the RMA. Although social well-being is referred to in the objective, there is no mention of this in the policies. Additionally, there is a general lack of recognition in the draft NPS FM 2019 for the importance of strategically planned UGAs. This could be better reflected in the NPS as the essential development of land for housing and urban development is significant in terms of providing for peoples' social wellbeing. Note that MfE's discussion document on the proposed NPS on Urban Development 'Planning for Successful Cities' states: • Protecting urban freshwater ecosystems and providing for urban development requires local authorities to balance competing priorities; • This is an inherent part of environmental management, and will need to be managed by local authorities at a local level; • NPSs to be aligned to give clarity on how to balance these matters in urban planning. To do this: - Local authorities can identify areas not appropriate for urban development (due to freshwater values); - NPS & NES FM intended to recognise importance of urban streams and encourage urban design to protect them, while also recognising piping and reclamation may be unavoidable when providing for urban growth; - Direction in the NPS FM intended to ensure decisions about freshwater in urban environments can be made in an integrated way as part of wider decisions about urban form. The NPS FM requires TAs to include provisions in District Plans to avoid, remedy or mitigate adverse effects on freshwater that are associated with urban development. To assist with decision making,

NPS / NES Provision	Tauriko West	Te Tumu	Assessment and submission points
			the NPS FM could provide clearer direction and greater recognition for strategically planned UGAs.
General Policies			
Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai;			No issue with Policy 1 – key consideration is the concept of Te Mana o te Wai and the appropriateness of the 'hierarchy of obligations' as discussed above.
Policy 2: Freshwater is managed through a national objectives framework, in order to ensure that the health and wellbeing of waterbodies and freshwater ecosystems is maintained or improved;			No issue with Policy 2 – key consideration is whether the national objectives framework is appropriate and able to be met for the Wairoa and Kaituna.
Policy 3: The condition of waterbodies and freshwater ecosystems is systematically monitored over time, and action is taken to reverse deteriorating trends;			No issue with Policy 3 – generally aligned with NPS FM 2014/17.
Policy 4: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchments basis, including the effects on sensitive receiving environments;			No issue with Policy 4 as is very generic and is consistent with NPS FM 2014/17 and BOP RPS and Plans.
Policy 5: Iwi and hapū are involved in freshwater management, and tangata whenua values and interests are identified and reflected in the management of, and decisions relating to waterbodies and freshwater ecosystems;			No issue with Policy 4 as is very generic and is consistent with NPS FM 2014/17 and BOP RPS and Plans. We assume that Council will engage with Iwi and hapū regarding tangata whenua values associated with the UGAs.
Policy 6: The national target for water quality improvement (as set out in Appendix 3) is achieved;	May have implications for Wairoa River, but unlikely to have significant implications for UGA.		Concept of Policy 6 appears appropriate. The national target is to increase proportions of specified rivers and lakes that are suitable for primary contact (by reducing E. coli and cyanobacteria-planktonic). The Wairoa River (at Te Puna) passed water quality tests for 100% of the time in 2019 (to March 2019).
Policy 7: Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided;			Policy 7 is generic and already imbedded in NPS FM 2014/17 and the RPS and Regional Plan (PC 9).
Policy 8: There is no further loss or degradation of natural inland wetlands;	Policy 8 will have implications for both UGAs as they include 'inland wetlands', which are present in both UGAs.		NPS FM 2014/17 directs protection of significant values of wetlands. See discussion under Policy 3.15 – Inland Wetlands – inconsistency between 'no loss or degradation' in general Policy 8 and application of the effects mitigation hierarchy in Policy 3.15(4). TCC submits: • Amend Policy 8 and Policy 3.15(2) to promote the concept of 'no net loss' for wetlands, rather than 'avoidance', and incorporate concepts of 'enhancement' and 'net gain' (which are used in the NES-FW).
Policy 9: There is no further net loss of streams;	Policy 9 will have implications for both UGAs as these areas include 'streams'. As indicated above, a key issue is whether the policy applies to ephemeral streams. It is also unclear if this is 'stream specific' or relates to a broader area. This will have significant implications for Tauriko West, but less for Te Tumu.		Not clear whether 'no net loss' applies to physical length/size or values – or both. Also, it is not clear whether this allows offsetting (reconstructing) in a different location as the effects management hierarchy provided in Policy 3.16(3) appears to be specific to a stream, rather than taking an overall approach. TCC submits that this policy be clarified so that it relates to total stream length/values within a region, FMU or similar. Broadening it out to FMU would provide more opportunity for offset mitigation to apply.
Policy 10: The significant values of outstanding waterbodies are protected;	Policy 10 will only be relevant if the Regional Council identifies 'outstanding waterbodies' and associated significant values in or surrounding the UGAs.		TCC supports intent of policy to protect significant values of outstanding water bodies, which will be identified through RPS or Regional Plan provisions. It is not clear why there is a difference in the wording used in Policy 10 and Policy 11 (protected v safeguarded) and what is intended by this. TCC seeks clarification of what the two terms mean and how they differ to aid interpretation and implementation.

NPS / NES Provision	Tauriko West	Te Tumu	Assessment and submission points
Policy 11: The habitats of indigenous freshwater species are safeguarded;	Policy 11 is relevant for both UGAs, particularly Tauriko West, as they include habitats that support indigenous freshwater species. This would require measures to be put in place to protect these habitats.		Policy 11 requires that habitats of indigenous freshwater species are safeguarded to support those species. This may mean that changes can occur as long as the habitat continues to support the species.
Policy 12: Information about the state of waterbodies and freshwater ecosystems, and the challenges to their health and wellbeing, is regularly reported on and published;			Policy 12 is generic in nature and does not have significant implications for the UGAs.
Policy 13: Communities are enabled to provide for their economic wellbeing while managing freshwater in a manner consistent with Te Mana o te Wai and as required by the national objectives framework and other requirements of this National Policy Statement.			Policy 13 is similar to Objective A4 and B4 (and associated policies) in the NPS FM 2014/17 in that it provides for economic well-being. However, in the draft NPS FM 2019 this is subject to the concept of Te Mana o te Wai and the national objectives framework (contained in Part 3, subpart 2 of the draft NPS FM 2019) where economic well-being is lower on the priority order. TCC submits that there is no reference to 'social well-being' (as discussed under Objective 2.1) and this should be recognised in the NPS FM. One way to do this could be to extend Policy 13 to include reference to 'social well-being' and to give better effect to this through the implementation policies and the NES.
Part 3: Implementing objectives and policies			
Policy 3.2: Generic and requires implementation of Te Mana o te Wai Policy 3.3: Tangata whenua roles and interests			Council will engage with tangata whenua in the development of the UGAs.
3.4 Integrated Management			
(1) Regional councils must, consistent with Te Mana o te Wai: a) recognise the interactions ki uta ki tai between freshwater, land, waterbodies, freshwater ecosystems, other ecosystems, and sensitive receiving environments, including the coastal environment; and b) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects	Generic policy and applies to both Tauriko West and Te Tumu. The types of methods that the NPS envisages may be adopted to achieve the policy outcomes (e.g. limits on impervious surfaces, green infrastructure, and Low Impact Design techniques) are not currently used in the City Plan and consideration will need to be given to these methods for the Tauriko West UGA (as is proposed). We note that conditions in the CSC for the Te Tumu UGA include the requirement for a Catchment Management Plan, including reference to low impact design as the preferred option of stormwater management. We also understand that stormwater is proposed to be largely disposed of via soakage.		The integrated approach promoted by Policy 3.4 is generally consistent with the NPS FM 2014/17, the RPS and the Regional Plans. The overall intent is reasonable, however, it is not clear whether the direction provided by clauses (5) and (6) apply to a plan change (such as those to provide for the UGAs) or whether it only applies when the Council undertake a review in accordance with the requirements of the RMA. (5) is not necessary as the requirements on TAs in clause (6) will apply regardless, given the NPS must be given effect to by a District Plan. We note that the use of green infrastructure inherently incorporates the use of both constructed and natural systems, with the latter often being enhanced to serve a wider function. The use of enhanced natural wetlands is a potential conflict in the NPS/NES. TCC seeks the following changes in relation to subclause (6): • Amend subclause (6) to clarify that the review of the district plan referred to is a review under section 79 of the RMA. • Elevate the water sensitive design considerations in the information note under subclause 6 to be part of the sub-clause of the policy to give it more weight, with the following amendments:: • The first point should relate to reducing stormwater runoff volumes at source. Regulating impervious area and infiltration are methods. Water reuse is an obvious omission to this. • Similarly, requiring treatment of contaminants is a method – the aim should be to reduce both the generation and discharge of contaminants at source – rather than a single method of treatment. • The third point requires clarification. It would be better to refer to not urbanising areas where effects of freshwater
(2) Regional councils must make or change their regional policy statements to the extent needed to provide for the integrated management of the effects of: a) the use and development of land on freshwater; and b) the use and development of land and freshwater on sensitive receiving environments.			
(3) Giving effect to subclause (2) includes encouraging the co-ordination and sequencing of regional or urban growth, land use and development, and the provision of infrastructure.			
(4) In order to give effect to this National Policy Statement, local authorities that share jurisdiction over a catchment should co-operate in the integrated management of the effects on freshwater of land use and development.			
(5) Every regional council must insert the following method (or words to the same effect) into its regional policy statement: "District plans must include objectives, policies, and methods to avoid, remedy, or mitigate the cumulative adverse effects of land use on freshwater bodies, freshwater ecosystems, and sensitive receiving environments resulting from urban development."			
(6) Every territorial authority must include objectives, policies, and methods in its district plan at the next review of the plan to avoid, remedy, or mitigate the cumulative adverse effects of land use resulting from urban development on waterbodies and sensitive receiving environments. **Information note:** The following are examples of the kinds of methods territorial authorities could use to comply with clause 3.4(6): • Regulating impervious surface cover and/or requiring on-site infiltration; • Requiring treatment of contaminants at source; • Using zoning/designations to avoid all, or certain types of development in areas where the effects on freshwater could not be adequately managed; • Provision of green infrastructure (especially for stormwater management); • Use of best practice Water Sensitive Urban Design or Low Impact Design techniques.			

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			cannot be adequately mitigated, unless there are over-riding reasons for urbanisation. Alternatively, it could refer to 'managing land use and development, including its location, to avoid effects on freshwater that would result in the freshwater objectives not being met'. • We are not sure why a designation is referred to in this point. • The fourth point should refer to the 'use of green infrastructure' to better allow for the use of natural assets.
Subpart 2 – National objectives Framework **Policies 3.5 to 3.14**	We assume that established attribute states will be met in waterbodies receiving urban runoff from the UGAs. This will need to be demonstrated for Tauriko West as part of the consent application.		A series of policies requiring regional councils to identify values for each FMU; set target attribute states, and flows and levels, for waterbodies; develop interventions (limits specified in rules, or action plans) to achieve the target attribute states, flows, and levels; monitor waterbodies and freshwater ecosystems; and take steps if deterioration is detected. These could have implications for the delivery of the UGAs.
Subpart 3 Specific Requirements			
3.15 Inland Wetlands	General observation – NPS FM does not recognise that there are many small wetlands that may not be significant or valuable, but that meet the definition and therefore are captured by the policy framework, including provisions directed for regional and district plans.		
coastal wetland means a natural wetland that is influenced by marine or coastal geomorphological processes to the seaward extent of freshwater influence, and includes: a) saltmarshes (of which mangroves can be a structural component); and b) seagrass meadows in intertidal and subtidal zones less than 2 m below mean low water spring tide **constructed wetland** means a wetland constructed by artificial means that: a) supports an ecosystem of plants that are suited to wet conditions; and b) is constructed for a specific purpose in a place where a natural wetland does not already exist **inland wetland** means any wetland that is not a coastal wetland, but does not include geothermal wetlands **natural wetland** means a wetland as defined in the Act (regardless of whether it is dominated by indigenous or exotic vegetation), except that it does not include: a) wet pasture or paddocks where water temporarily ponds after rain in places dominated by pasture, or that contain patches of exotic sedge or rush species; or b) constructed wetlands; or c) geothermal wetlands	Identification of the existence and extent of wetlands requires on-site assessment and implementation of a range of tools and methods. The Landcare Delineation Protocols are a common tool that can be helpful (alongside on-site assessment) for identifying the existence and extent of wetlands in some (but not all) situations. There are some limitations with use of the Landcare protocol to determine the extent of highly modified wetlands, such as those that exist at Tauriko West and Te Tumu and, in such cases, hydrological assessment is likely to be needed in addition to on-site analysis. The Boffa Miskell ecological assessment identifies a number of wetlands that are likely to be defined as 'natural' and 'inland' wetlands under the NPS FM 2019. In addition, our initial impression (based on our knowledge of Tauriko West and advice from 4Sight's Principal Ecologist) is that the low-lying area towards the south of the UGA that supports the network of modified streams and farm drains is likely to be a former wetland. Due to the extent of modification that is likely to have occurred, however, this area may no longer be classified as a wetland. Other areas of the UGA may also have previously been wetlands prior to modification.	The Wairakei Stream is likely to be a continuum of ecosystems, including streams, lakes and wetlands. Our initial impression is that, in the location of the Te Tumu UGA, the Wairakei Stream is likely to be classified as a natural wetland in accordance with the NPS FM 2019. We note, however, that the western part of the stream in the Te Tumu UGA is identified as a stream in the BOP Natural Resources Plan. Other natural wetlands also exist within this UGA and additional assessment will be required to determine their extent.	There is a structural issue with sub-part 3 of the NPS FM in that it appears the definitions under 3.15(1) are intended to apply to subpart 3 – Specific requirements. However, in the draft NPS FM 2019 they are included within the 'Inland Wetland' policies and therefore it could be interpreted that they only apply to inland wetlands, rather than matters addressed under Subpart 3. The definition of a constructed wetland appears to preclude the enhancement of a natural wetland as it refers to being in a place where a natural wetland doesn't already exist. An important submission point for stormwater is: • There needs to be some recognition in the wetland policies to enable the use and enhancement of natural (typically degraded) wetlands for stormwater treatment. This could be provided through a definition of an 'enhanced natural wetland' or similar, or alternatively recognition that some constructed wetlands could include enhanced components of natural wetlands and encompass a dual stormwater management/ecosystem role.
loss or degradation, in relation to a wetland, means the loss of extent, or a condition of deteriorated or depleted ecosystem health, ecosystem services, processes, or functioning **net gain**, in relation to a wetland or stream, means the point at which the measurable positive effects on the ecosystem health of the wetland or stream exceed the point of no net loss **net loss** means the point at which measurable positive effects from targeted environmental management activities match the environmental losses due to the impacts of a specific development project, so that compared to a baseline there is no net reduction in environmental values over space and time	These definitions are important for both UGAs given urbanisation of these areas will impact wetlands and streams, and protection, mitigation and off-setting/compensation will be required. This includes both loss in extent, and also degradation. It is not clear whether degradation also includes the effects of discharges to a wetland as the NPS/NES generally control works/drainage, not discharges to.		The definition of **degradation** might be difficult (and expensive) to assess/determine. **Net gain** Definition appears to mean that a net gain cannot occur as an off-set or compensation in a different location. This is contrary to the effects management hierarchy. TCC therefore submits that: • Extend the concept of net gain to include positive effects/gains that occur within the FMU (or similar). **Net loss** There is an error in the drafting and as currently drafted the definition means '<u>no</u> net loss'. It is also not clear what "over space and time" means in the context of the policy. • This definition is difficult to follow and interpret. • There should be an additional definition for 'Net Loss'.

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effects management hierarchy means an approach to managing the adverse effects of subdivision, use, and development that requires that: a) adverse effects are avoided where possible; and b) adverse effects that cannot be demonstrably avoided are remedied where possible; and c) adverse effects that cannot be demonstrably remedied are mitigated; and d) in relation to adverse effects that cannot be avoided, remedied, or mitigated, offsetting is considered; and e) if offsetting is not demonstrably achievable, compensation is considered			**Effects management hierarchy** TCC submits that this definition is useful, but there are a range of potential improvements: • The reference to 'where possible' is overly restrictive as almost everything is 'possible' (including not developing the UGAs). The term 'practicable' is considered more appropriate and is supported by case law. This term includes economic considerations that can be taken into account to determine whether an outcome is 'practicable'. • We expect 'compensation' is a financial contribution towards a restoration fund for example. This should be clarified to ensure that any compensation is directed to environmental improvement. • There is no apparent obligation for offset/compensation, other than for it to be considered. If the intent is no net loss, the end result should be offset/compensation if all other options are exhausted. • In addition, guidance would be useful as to how to apply the policy, and in particular the circumstances where offset might be more acceptable than avoidance or mitigation – for example the recognition that UGAs are likely to result in circumstances that require offset.
(2) Every regional council must include in its regional policy statement the following policy (or words to the same effect): "The loss or degradation of all or any part of a natural inland wetland is avoided." (3) However, the policy required by subclause (2): a) must be read subject to any rules that give effect to the requirements of the National Environmental Standards for Freshwater, or to any more stringent rules that the council, as permitted by those Standards, includes in its regional plan; and b) does not apply to adverse effects from an activity that is for the purpose of restoring a wetland and those effects are temporary and reversible, or are consistent with achieving the long-term restoration aims for the wetland. (4) Every regional council must make or change its policy statement and plan to ensure that, when considering an application for a consent, adverse effects on any natural inland wetland are managed by applying the effects management hierarchy.	This requirement (to be included in the RPS and then be given effect to through the Regional and District Plans) will likely have significant implications for Tauriko West and possibly Te Tumu. It is not clear where natural wetlands that are utilised and enhanced for stormwater management purposes fit in. There is a risk that this is seen to be degrading a natural wetland and hence required to be 'avoided'.		Policy 3.15(2) is overly restrictive and essentially requires protection of all natural inland wetlands, regardless of their values and other benefits that may arise. As above, the concept of 'no net loss' is preferred. The policy is also inconsistent with the direction provided by Policy 3.15(4), which requires adverse effects on natural inland wetland to be managed in accordance with the mitigation hierarchy. TCC seeks: • to amend Policy 3.15(2) to better reflect the mitigation hierarchy approach and potentially refer to concepts of significant values and 'no net loss'. • clarification regarding the level of protection required for wetlands that are enhanced and utilised for drainage purposes in accordance with Water Sensitive Design principles.
(5) Every regional council must, in respect of natural inland wetlands, and may in respect of constructed wetlands,: a) identify and map wetlands in its region that are: i. 0.05 hectares or greater in size; or ii. known to contain threatened species; or iii. of a type that is naturally less than 0.05 ha in size (such as ephemeral wetlands or springs); and b) establish and maintain an inventory of wetlands that includes, at a minimum, the following information about each mapped wetland: i. identifier and location; ii. area and Geographic Information System (GIS) polygon; iii. classification of wetland type; iv. values (such as ecosystem services, habitat for indigenous biodiversity, amenity values); v. results of monitoring.	Generic policy directing council to identify and classify wetlands, which will be relevant for the UGAs and the implications of such identification/classification will likely depend on the values that are attributed to the wetlands. The policy will also require springs to be mapped. This will be relevant to Tauriko West and possible Te Tumu (dune lakes). It is not clear what an ephemeral wetland is. This may have significant implications for low lying land in both Tauriko West and Te Tumu.		TCC seeks: • Clarification of expectations for mapping springs. • Identify need to define 'ephemeral wetland'.
(6) In case of uncertainty or dispute about the existence or extent of a natural inland wetland, a regional authority must use the wetland delineation protocol available at: https://www.landcareresearch.co.nz/__data/assets/pdf_file/0003/181353/1903-TSDC148-			TCC has been advised that it would not be practical to rely on the Landcare protocol in all situations and there needs to be flexibility to use expert assessment/judgement and other tools.

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Wetland-delineation-protocols.pdf, and the outcome of applying that protocol must be taken as definitive.			TCC submits that Landcare protocol is helpful in some situations, but not all, and is particularly limited with respect to highly modified environments.
(7) Every regional council must include objectives, policies, or methods in its regional policy statement and plans that provide for and encourage the restoration of natural inland wetlands in its region.	Regional planning provisions that reflect (7) are likely to apply to the UGAs. However, the implications cannot be assessed at this stage.		No issue with concept, however, this could be better directed by the NPS rather than deferring responsibility to regional policy statements and plans. The policy could also be extended to provide for and encourage restoration for stormwater management purposes.
(8) Regional councils must permit the management of a constructed wetlands to prioritise activities and management practices that are necessary for, or consistent with, the purpose for which the wetland was constructed.	Regional planning provisions that reflect (8) are likely to apply to the UGAs if they are to include constructed wetlands (e.g. for stormwater attenuation and/or treatment).		This is helpful for stormwater management. TCC supports this policy direction.
(9) Every regional council must: a) develop and undertake a monitoring plan to monitor the condition of its region's natural inland wetlands by reference to, at a minimum, their extent, vegetation, hydrology, and nutrients (in water, soil, or both); and b) have methods to respond when degradation of wetland conditions is detected.	Generic requirement providing direction to Regional Councils regarding identification of wetlands. Unlikely to have significant implications for UGAs, although the wetlands in these areas would need to be identified and monitored by Regional Council. Noting that Regional Councils will need to develop methods to respond to degradation of wetlands, the UGAs would need to designed/constructed to ensure the condition of retained wetlands is not degraded.		General observation is that this is a significant undertaking for Regional Council and the requirements would apply to any wetland greater than 500m^2 and representative monitoring would be required.
3.16 Streams			
(1) Every regional council must include the following policy (or words to the same effect) in its regional policy statement: "The extent and ecosystem health of rivers and streams in the region, and their associated freshwater ecosystems, are at least maintained".	This policy has potentially significant implications for Tauriko West as it requires the extent and ecosystem health of streams to be at least maintained. However, it is not clear whether the policy would prevent the reclamation of a stream if it was to be replaced by a new stream (in either same or different location), and whether improved ecosystem values can off-set the physical extent of the stream that may be lost.	Policy may affect Te Tumu as the Regional Council mapping shows part of the Wairakei Stream is a 'stream' and another small stream (appears may be remnant area of Kaituna River before diversion). Based on information provided at our briefing meeting on this UGA, we understand that the geographical extent of the Wairakei Stream is to be retained. Consideration will need to be given to maintaining existing ecosystem health when designing the UGA.	The approach of 'no net loss' in the region is preferred, and the intent of the policy needs to be clarified. In relation to Policy 3.16(1), TCC seeks that the term 'extent' be clarified in the policy and, in particular, that this enables offset (reconstructed) streams elsewhere. This may also require a change to clause (3) to clarify that effects on any stream may be offset by enhancement/establishment elsewhere.
(2) However, the policy must be read subject to any rules that give effect to the requirements of the National Environmental Standards for Freshwater, or to any more stringent rules that the council, as permitted by those Standards, includes in its regional plan.			
(3) Every regional council must make or change its policy statement and plan to ensure that, when considering an application for a consent, adverse effects on any stream are managed by applying the effects management hierarchy.			
(4) Every regional council must make or change its regional policy statement and plans to ensure that the following do not result in a net loss in the extent or ecosystem health of a stream: a) permanently diverting a stream; b) culverting a stream, where that is allowed and as far as practicable.	Likely to have significant implications for Tauriko West given streams likely to be diverted and culverted.	Potential to have implications for Te Tumu, depending on whether the Wairakei Stream is classified as a 'stream' or 'wetland' and whether there are any other streams that will be impacted by diverting and culverting.	It is not clear what is intended by this policy. The concept of 'no net loss' usually refers to an overall approach where mitigation and off-setting is considered, whereas this policy appears to apply to a specific stream and its health. This could be amended to 'avoiding the permanent diversion or reclamation of a stream unless it is offset by the re-establishment or enhancement of streams elsewhere to achieve no net loss in physical extent, ecological habitat and values.
(5) Every regional council must make or change its regional policies and plans to ensure that the infilling of river or stream beds is avoided, unless there are no other practicable alternative methods of providing for the activity, and it is part of an activity: a) designed to restore or enhance the natural values of the stream or of any adjacent or associated ecosystem; or b) necessary to enable the development, operation, maintenance and upgrade of nationally significant infrastructure; or c) required for the purposes of flood prevention or erosion control.	This policy has potential to assist Tauriko West UGA if it can be expanded to include UGAs (or other similar term) as an activity that can be considered under the policy.	Potential to assist Te Tumu UGA if 'streams' are to be infilled and if amendments are made to provide reference to UGAs.	As currently worded, this policy is not likely to provide for efficient development of the UGAs. We do not consider that the infilling of streams to provide for urban growth can reasonably be interpreted as being for the purpose of 'flood prevention or erosion control'. Also, the term 'infilling' is not defined and inconsistent with the RMA. TCC submits that: • Support intent of policy, but broaden to encompass infilling/diversion to support efficient development of identified growth areas. • Highlight general lack of consideration for UGAs and that not all stream loss/diversion can be avoided. Large growth areas are difficult to identify and those that have gone through significant planning and feasibility processes (and identified in RPS/Plans). Link to NPS UD discussion document. • The term 'infilling' is not defined in NPS nor RMA and the policy should refer to reclamation. • Clarify that this policy relates to stream loss, and not to works/activities to stabilise stream banks etc.
(6) However, subclause (5) is subject to any rules that give effect to the requirements of the National Environmental Standards for Freshwater, or to any more stringent rules that the council, as permitted by those Standards, includes in its regional plan.			
3.17 Fish Passage			

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(1) Every regional council must make or change its regional plan to include aquatic life objectives to achieve diversity and abundance of fish in all or specified streams.	This policy has some relevance for the UGAs but is unlikely to be a significant issue (unless the Regional Council identifies diversity and abundance objectives for streams within the UGAs)		As currently worded, this policy provides flexibility for Regional Councils as to whether they identify specific streams in the Region or all streams that need to meet identified diversity and abundance outcomes. However, the drafting is inconsistent (aquatic life objectives – where ecosystem etc have been preferred elsewhere). It is not clear what 'all or specified' means and how this is to be determined e.g. what if fish passage is not the constraining criteria? Consider working with Regional Council regarding streams within UGAs and whether they would include objectives for fish passage.
(2) When preparing the objective, regional councils must: a) identify the valued species, and their relevant life stages, for which instream structures must provide passage; and b) identify undesirable species whose passage can or should be prevented; and c) identify streams where fish passage for undesirable fish species is to be impeded in order to manage their adverse effects on fish populations upstream of any barrier; and d) take into account any Freshwater Fisheries Management Plans and Sports Fish and Game Management Plans approved by the Minister of Conservation under the Conservation Act 1987; and e) consult with the Department of Conservation to identify any threatened fish species that may benefit from natural or built barriers to exclude undesirable species.	Policy will have implications for Tauriko West as valuable species have been identified and fish passage will likely be required for these. There are stream outlets to the Wairoa, fish passage may be an issue in Tauriko West (i.e. discharge via a stormwater pond/wetland)	Unlikely to be an issue – doesn't seem to be any streams other than Wairakei?	Meaning of 'undesirable' fish species is unclear and should be clarified.
(3) Regional councils must make or change their plans to require that regard is had to at least the following when considering an application for a consent relating to an instream structure: a) the extent to which the structure provides, and will continue to provide for the foreseeable life of the structure, the council's aquatic life objective for fish; b) the extent to which the structure does not cause a greater impediment to fish movements than in adjacent stream reaches; c) the extent to which it provides efficient and safe passage for all fish (other than undesirable species) at all their life stages; d) the extent to which it provides a diversity of physical and hydraulic conditions leading to a high diversity of passage opportunities for fish; e) any proposed monitoring and maintenance plan for ensuring that the structure meets the council's aquatic life objective for fish now and in the future.	Will need to be taken into account, but unlikely to be a significant issue for future structures that can be designed to meet these criteria/considerations.	Te Tumu CSC authorises structures which must be installed and operated in accordance with the Papamoa Comprehensive Stormwater Consent Catchment Management Plan Volume 1 dated August 2007 (incorporating Volume 3 Technical Reports) and Volume 2 dated April 2006. There are no specific conditions requiring fish passage, however, Regional Council could undertake a review under the RMA (s128(1)(ba) to investigate and require upgrading of culverts to provide for fish passage.	Clause (d) is unclear for most structures. Monitoring could be extensive as is required for all structures.
(4) Regional councils must establish and implement a work programme to improve the extent to which existing structures achieve the council's aquatic life objectives for fish.	Policies likely to be of limited relevance for UGAs because they are yet to be developed.		Generic policy that may have implications for Council's existing structures (i.e. across the City) if Regional Council assesses that they do not achieve aquatic life objectives for fish. A possible outcome would be the requirement to remediate assets. TCC submits that Policy 3.17(5) appears to assume that Regional Council will be the owner of the assets that require remediation. However, many structures will not be owned or managed by the Regional Council.
(5) The work programme must include the following: a) identifying existing instream structures within the region, and evaluating the risk they present as an undesirable barrier to fish migrations; b) prioritising structures for remediation, applying the ecological criteria described in Table 5.1, of the New Zealand Fish Passage Guidelines; c) documenting the structures or locations that have been prioritised, the remediation that is required to achieve the desired outcome, and how and when this will be achieved; d) identification of structures that have been remediated since the commencement date; e) how the ongoing performance of the remediated structure will be monitored and evaluated.			
(6) Regional councils must collect, maintain, and publish records of new and (known) existing instream structures and assess their likely impact on fish passage and river connectivity.	Policy (6) will be relevant to Tauriko West. We expect that the any consents granted by Regional Council may include conditions requiring information to assist the Council to collect the records and assess the impacts on fish passage and river connectivity.	Te Tumu includes culverts and Regional Council could implement a review of the consent to enable collection of information in accordance with Policy (6).	
3.18: Primary Contact Sites			

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(1) Regional councils must manage primary contact sites for: a) their risk to human health; and b) their suitability for the activities that take place in them, in terms of, for example, the absence of slippery or unpleasant weed growth, and the visual clarity of the water. (2) For every primary contact site in an FMU, regional councils must identify a sampling site or sites representative of the primary contact site or a number of primary contact sites. (3) Between 1 November and 31 March each year, every regional council must undertake weekly sampling for *E. coli*, unless: a) a single sample from the sampling site is greater than 260 *E. coli* per 100 mL, in which case: i. sampling frequency must be increased to daily, where practicable; and ii. the regional council must take all reasonable steps to identify potential causes of microbial contamination; or b) a single sample from the sampling site is greater than 540 *E. coli* per 100 mL, in which case the regional council must take all reasonable steps to notify the public, and keep them informed, that the site is unsuitable for primary contact until further sampling shows a result of 540 *E. coli* per 100 mL or less.	Bathing sites are currently identified on the Wairoa River and this policy requires Regional Council to manage water quality in the River to protect human health and provide for the recreational value. As a result of the NPS FM 2019 Regional Council may identify additional sites/areas along the Wairoa River, however, we do not expect this to be a significant issue for the UGA.	Unlikely to have implications for Te Tumu.	
Proposed National Environmental Standards for Freshwater (September 2019)			
Subpart 1 Wetlands			
4 Definitions for subpart 1			
constructed wetland means a wetland constructed by artificial means that: a) supports an ecosystem of plants that are suited to wet conditions; and b) is constructed for a specific purpose in a place where a natural wetland does not already exist			As highlighted previously, it is important to provide for enhanced natural wetlands used for stormwater management. • TCC seeks to include an additional clause to the effect that a constructed wetland includes a natural wetland that is extended/enhanced to provide for stormwater management in accordance with WSD principles.
nationally significant infrastructure means all or any of the following: a) State highways; b) the national grid electricity transmission network; c) national renewable electricity generation facilities that connect with the national grid, other than the facilities of existing hydro schemes; d) major gas or oil pipeline services (such as the pipeline from Marsden Point to Wiri, and high pressure gas transmission pipelines from Taranaki); e) any railway (as defined in the Railways Act 2005); f) rapid transit; g) airports that have a runway used for regular air transport services by aeroplanes that have a seating configuration of more than 30 passenger seats; h) commercial ports (as defined in Part A(6) of Schedule 1 of the Civil Defence Emergency Management Act 2002)			Restrictive nature of the NES means that it is inconsistent with the statements in the NPS UD discussion document (see comments on NPS above). TCC highlights that: • There are general implications for UGAs and that they are not provided for despite high importance at national, regional and city level in terms of providing for essential urban growth as directed by NPS UD. • The definition is broadened to include regionally significant infrastructure and strategic growth areas.
natural wetland means a wetland as defined in the Act (regardless of whether it is dominated by indigenous or exotic vegetation, and including coastal wetlands), except that it does not include: a) wet pasture or paddocks where water temporarily ponds after rain in places dominated by pasture, or that contain patches of exotic sedge or rush species; or b) constructed wetlands; or c) geothermal wetlands	Note previous comment that Tauriko West central area is likely to have been a wetland that has been drained and used for pasture. This would probably exclude it from being considered a wetland under the NPS/NES, but possibly not. If it was to be considered a wetland, this would have significant implications for this UGA.	As above, the Wairakei Stream may be considered a wetland. However, this may not have any implications (other than works in the vicinity).	See comments above regarding ephemeral wetlands.
public flood control or drainage means work carried out: a) 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 b) for the purpose of drainage works by drainage districts, under the Land Drainage Act 1908		Part of Te Tumu is in drainage scheme	The definition of '**public flood control or drainage'** should be clarified to make it clear that it includes stormwater management systems and associated structures.
vegetation destruction means destroying any significant indigenous vegetation	Unclear whether this affects Tauriko West as it depends on the interpretation of what constitutes 'significant indigenous vegetation'. There are no areas of		It is not clear how the definition of 'vegetation destruction' will be implemented in the context of standards 7 and 8, and whether the rule will only apply if areas of significant indigenous vegetation have been

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	significant indigenous vegetation, but not clear if the definition is broader than mapped areas.		identified and mapped in the Regional or City/District planning documents. TCC submits: • Clarify that 'significant indigenous vegetation' is vegetation that has been identified and mapped in a regional or district plan.
5 Standard wetland monitoring obligation			
(1) If the standard wetland monitoring obligation is a condition of any consent granted for the purpose of this Standard, the holder of the consent must: a) monitor the condition of the wetland (in terms of, at least, extent, vegetation, hydrology, and nutrients); and b) provide the results of monitoring to the consent authority at least annually, or in accordance with any monitoring plan; and c) advise the regional council if the monitoring indicates a decline in the ecological condition of the wetland. (2) The advice required by subclause (1)(c) must be given by phone immediately (or as soon as practicable), and be confirmed in writing within 20 working days after the phone advice. (3) The written confirmation must include a description of the scale of the decline and any known, actual, or likely reasons for it.	Generic requirement for monitoring and reporting that may apply to resource consents associated with wetlands in the UGAs. Could be quite onerous if applied to each wetland.		• Reference to 'decline in ecological condition' is unclear and needs to be defined or cross referenced to (1)(a) if this is the intent. • Clause (2) requires the consent holder to advise the Regional Council by telephone immediately (or as soon as practicable) if monitoring indicates a decline in condition (and then follow up in writing within 20 working days). This is impractical and an immediate phone call is unlikely to add any value. Written advice within 20 working days is sufficient. Should be in writing as that is acceptable for consent condition reporting and good practice for record keeping. • Clause (3) requires clarification as identification of reasons for decline will require judgement and assessment by an appropriately qualified person (e.g. qualified ecologist with certain amount of experience).
6 Standard conditions for nationally significant infrastructure			
Any consent granted for activities referred to in this subpart that relate to new or existing nationally significant infrastructure must include at least the following conditions: a) to the extent that adverse effects on a natural wetland cannot be avoided, remedied, or mitigated, any residual adverse effects on the natural wetlands must be offset to achieve a net gain; b) the person undertaking the activity is subject to the standard wetland monitoring condition for the duration of the consent; c) the person undertaking the activity must implement best practice erosion and sediment control measures for the duration of land disturbance, and these must be installed before the start of the land disturbance and be maintained until the site is stabilised against erosion.	Regulation not relevant for UGAs, however, if greater recognition is provided for them in the NPS FM 2019 then similar provisions may apply.		While this applied to nationally significant infrastructure, the following submission points are: • The regulation is poorly drafted • Due to the introductory sentence of the regulation, it may be interpreted that the conditions are to be included verbatim. • Clause (a) is inappropriate as a condition of consent and is best left as a matter for consideration through a consent process. • Clause (a) further highlights the inconsistency between the 'avoidance' direction in general Policy 8 of the draft NPS, and the specific policies relating to wetlands and provisions of the NES. • Clause (b) refers to the person undertaking the activity is subject to a wetland monitoring condition is unclear and poor drafting. • 'Best practice erosion and sediment control measures' referred to in clause (c) requires clarification as there will be different interpretations about what this means from region to region. *Note: In the Bay of Plenty, compliance with the Bay of Plenty Regional Erosion and Sediment Control Guidelines for Land Disturbing Activities is generally accepted as 'best practice'.*
7 Vegetation destruction – discretionary activities			
Vegetation destruction carried out in, or within 10 m of, any part of a natural wetland is a discretionary activity if it is carried out: a) for the purpose of restoring or maintaining the natural wetland; or b) for education or recreation purposes (including the construction and maintenance of structures such as boardwalks and signage that are constructed for educational or recreational purposes); or c) for the purpose of maintaining or meeting the operational needs of an existing hydro scheme; or d) for public flood control or drainage; or	Standard 7 and 8 have potential for significant implications for the UGAs in terms of impacts on yield and works associated with servicing etc. This will be a lesser risk if the rule only applies to areas mapped in planning documents as 'significant indigenous vegetation' and/or if the works are for public flood control or drainage that included stormwater and wastewater reticulation and associated infrastructure. Vegetation destruction is a discretionary activity for some types of activities (e.g. recreational), but not for providing for the essential function of providing urban growth and development.		This activity is unnecessarily restrictive and it is not clear how a discretionary activity/non-complying activity will be determined in the absence of associated policies. TCC submits: • Ensure that public flood control and drainage incorporates stormwater networks and infrastructure, including green infrastructure.

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e) for the purpose of building, maintaining, or operating any new or existing nationally significant infrastructure. **8 Vegetation destruction – non-complying activity** Vegetation destruction in, or within 10 m of, any part of a natural wetland is a non-complying activity if it is carried out for any purpose other than a purpose identified in clause 7.			• Application of Standards 7 and 8 requires clarification in light of the definition of 'vegetation destruction' and associated 'significant indigenous vegetation'. • The discretionary and non-complying activity classifications would not be warranted in all situations, particularly for enhancement or for the provision or maintenance of essential services. A controlled activity status could be utilised for these activities, provided that there is no net loss in extent, values and function. • It is not clear how discretionary and non-complying activities will be assessed under the relevant Regional and City plans (particularly in relation to non-complying activities which must meet the gateway test). Plans will include a range of existing policies that may not align to those of the NPS.
9 Earth disturbance – meaning			
earth disturbance means the disturbance of earth (including soil, clay, sand, rock, and peat),: a) including by moving, removing, placing, blading, cutting, excavating, cultivating, filling, excavating, or gardening it; but b) not including disturbance in the course of: i. planting indigenous plants for restoration purposes; or ii. installing fenceposts; or iii. removing pest or weed vegetation using hand-held tools. **earth disturbance for drainage** means earth disturbance that involves making new drainage ditches or deepening existing drainage ditches **general earth disturbance** means earth disturbance that is not earth disturbance for drainage	Generic definition that is relevant to both UGAs.		The first set of Planning Standards includes a definition for 'earthworks' and this is similar to the definition of 'earth disturbance' in the draft NPS FM 2019, although there are some differences. The meaning of the term 'drainage ditches' is not defined in relation to wetlands (Part 2, subpart 1 of the NES), however it is defined in Part 3, which relates to 'farming'. In Part 3 'drainage ditch' means any artificial watercourse designed, constructed, or used to drain surface or subsurface water; but does not include any swale (shallow depression) whose primary purpose is to direct surface water flow during heavy rain. TCC submits that: • The definitions in the NPS should align with the Planning Standards as follows definition as below. The standards can list additional matters as being exempt from, or requiring consent, eg: **Earthworks** means the alteration or disturbance of **land**, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the **land** including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of **land** for the installation of fence posts.
10 General earth disturbance – discretionary activity			
(1) Engaging in general earth disturbance in, or within 10 m of, any part of a natural wetland is a discretionary activity if it is undertaken: a) for the purpose of restoring or maintaining the natural wetland; or b) for education or recreation purposes (including the construction and maintenance of structures such as boardwalks and signage that are constructed for educational or recreational purposes); or c) for the purpose of maintaining or meeting the operational needs of an existing hydro scheme; or d) for the purpose of building, maintaining, or operating any new or existing nationally significant infrastructure.	Standard will be relevant for Tauriko West when restoring/maintaining natural wetlands.	Standard will be relevant for Te Tumu when restoring/maintaining natural wetlands.	These rules are not well drafted and it is not clear what type of consent they are – presumably a land use consent. The discretionary activity classification is overly restrictive, particularly when earth disturbance is being undertaken for the purposes of maintaining and/or restoring a wetland. A controlled or restricted discretionary activity classification is more appropriate.
(2) Engaging in general earth disturbance in, or within 10 m of, any part of a natural wetland for the purpose of public flood control or drainage is a discretionary activity if the work will: a) result in a greater than 0.1 m change beyond the natural wetland's annual median water level; and b) cause changes in the natural wetland's seasonal (summer to winter) water level fluctuations (minimum or maximum water levels) that have a detrimental effect on the extent, ecological quality (type and diversity of aquatic plant and animal communities) or functioning of the natural wetland.	Likely to be relevant for public stormwater assets in Tauriko West	Likely to be relevant for public stormwater assets at Te Tumu	

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(3) Any resource consent granted for general earth disturbance must include at least the condition that the disturbance is limited to the minimum necessary to do the work.			No particular issue with the concept of the standard to include condition in consents that disturbance be limited to the minimum necessary to do the work. However, this is more a matter of assessment than a condition.
11 General earth disturbance – non-complying activity			
Engaging in general earth disturbance in, or within 10 m of, any part of a natural wetland is a non-complying activity if the work: a) results in the reclamation of land, or infilling, or damage to or destruction of the natural wetland's natural hydrological regime, form, function, ecosystem services, amenity values, or ecological values; and b) is done for any purpose other than a purpose described in clause 10(1) or (2).	Relevant for Tauriko West	Relevant for Te Tumu	This rule is not well drafted and difficult to implement in practice. TCC submits that: • Clause (a) of Standard 11 is poorly drafted, lacks certainty and cannot be applied in practice (e.g. how is damage or destruction to amenity and ecological values to be determined?); • It is not clear how such activities will be assessed under the relevant Regional and City plans (particularly in relation to non-complying activities which must meet the s104D gateway test). • The standard refers to 'reclamation of land' and 'infilling', and these terms should be clarified through definitions.
12 Earth disturbance for drainage – discretionary activities			
(1) Engaging in earth disturbance for drainage in or within 100 m of any part of a natural wetland is a discretionary activity if it is undertaken for the purpose of restoring the natural wetland to its natural hydrological regime.			TCC submits that: • As defined in the proposed NES, '**earth disturbance for drainage'** only applies to disturbance for the purposes of making new drainage ditches or deepening existing drainage ditches and therefore does not apply generally. It is unlikely that these activities would be for the purpose of enhancing a wetland. More likely, enhancement of wetlands will be associated with the damming/diversion of water to retain water levels. • The discretionary activity classification is overly restrictive given the purpose of earth disturbance is for restoration. A controlled or restricted discretionary activity classification is considered more appropriate. • What if 100m is not in catchment of wetland – i.e. doesn't affect it at all? The factor is whether the drainage is in the catchment (upstream and downstream) of the wetland.
(2) Any resource consent granted for general earth disturbance for the purpose of restoring a natural wetland to its natural hydrological regime must include at least the following conditions: a) a qualified wetland ecologist and hydrologist must establish the natural hydrological regime of the natural wetland; b) the person undertaking the activity is subject to the standard wetland monitoring obligation for the duration of the consent; c) best practice erosion and sediment control measures must be implemented for the duration of the land disturbance, and those measures must be installed before the start of the land disturbance and are maintained until the site is stabilised against erosion.	Relevant for Tauriko West	Relevant for Te Tumu	This standard/rule mixes matters of assessment and conditions • Clause (a) requires a qualified wetland ecologist and hydrologist to establish the natural hydrological regime of the wetland concerned and it is not clear how is to be applied in practice. This would be better as a matter of assessment rather than a condition. • In relation to clauses (b) and (c) refer to previous comments under Standards 5 and 6.
(3) Engaging in earth disturbance for drainage in or within 100 m of any part of a natural wetland is a discretionary activity if it is undertaken: a) for: i. public flood control or drainage; or ii. building, maintaining, or operating any new or existing nationally significant infrastructure; and			Same issue as raised above re the definition of earth disturbance for drainage and how it relates to public flood control and drainage. TCC submits that: • Earth disturbance for drainage only applies to 'drainage ditches' and not other aspects of public drainage. • Same issues as Standard 10(2) re clause (b)

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b) the work will: i. result in a greater than 0.1 m change beyond the natural wetland's annual median water level; and ii. cause changes in the natural wetland's seasonal (summer to winter) water level fluctuations (minimum or maximum water levels) that have a detrimental effect on the extent, ecological quality (type and diversity of aquatic plant and animal communities) or functioning of the natural wetland.			
13 Earth disturbance for drainage – non-complying activity			
Engaging in earth disturbance for drainage within 100 m of any part of a natural wetland is a non-complying activity if: a) the work is done for anything other than: i. restoring the natural wetland to its natural hydrological regime; or ii. public flood control or drainage; or iii. building, maintaining, or operating any new or existing nationally significant infrastructure; and b) the work will: i. result in a greater than 0.1 m change beyond the natural wetland's annual median water level; and ii. cause changes in the natural wetland's seasonal (summer to winter) water level fluctuations (minimum or maximum water levels) that have a detrimental effect on the extent, ecological quality (type and diversity of aquatic plant and animal communities) or functioning of the natural wetland.			As above. Same issues as previously raised.
14 Earth disturbance for drainage – prohibited activity Engaging in earth disturbance for drainage in any part of a natural wetland is a prohibited activity if the work is done for any purpose other than: a) restoring the natural wetland to its natural hydrological regime; or b) public flood control or drainage; or c) building, maintaining, or operating any new or existing nationally significant infrastructure.	Implications for development in general and the ability to undertake efficient urban development and off-set loss by developing/enhancing a wetland elsewhere. Definition of natural wetland is critical.		This provision does not allow the offset of effects by the recreation of a wetland elsewhere to achieve no net loss and hence is inconsistent with the effects management hierarchy. It does not enable the efficient provision of growth and development in a way that meets both the objective of the NPS FM and the NPS UD, should such works be necessary. Prohibited activity status is unnecessary and will be difficult to administer as it relates to all wetlands, regardless of size and value and the scale of earth disturbance. Need to be very cautious applying a prohibited activity at a national scale.
15 Water take activities – meaning			
In clauses 16 and 17, **water take activities** means activities such as taking, using, damming, or diverting water that: a) are not earth disturbance or vegetation destruction; but b) result in a change to the water level of a natural wetland.	Implications for diverting streams and springs that may feed, or be downstream of, a wetland.		This definition is confusing and aggregates a number of different activities into a single definition, which has the potential to create a range of anomalies. TCC submits that: • The definition is unclear and aggregates a range of activities. • It is not clear what is meant by excluding water takes that are 'earth disturbance' or 'vegetation destruction' (e.g. if earthworks involve reclamation that divert water, is this a water take?); • The term refers to activities that change the level of water, which could include increasing the water level and this is not the usual approach to defining a water 'take'. This may be necessary to restore a wetland.
16 Water take activities – discretionary activity			
(1) A water take activity is a discretionary activity if it is undertaken: a) for the purpose of education or recreation (including the construction and maintenance of structures such as boardwalks and signage that are constructed for educational or recreational purposes), and the change in water level is temporary; or b) for the purpose of maintaining or meeting the operational needs of an existing hydro scheme.	Water take standards potentially significant implications for UGAs, particularly Tauriko West where there are wetlands and streams that may be fed by surface springs.		The issues are similar to those raised above: • The rule framework is very restrictive, with a limited range of activities being classified as discretionary activities, and everything else falling to be classified as non-complying. The

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(2) A water take activity is a discretionary activity if it is done for the purpose of restoring the natural wetland to its natural hydrological state.			activities under (1) could be extended to include public drainage and be a restricted discretionary activity. • There appears to be a drafting error in Standard 17 and it is not clear whether the 'and' at the end of each point is intended to be cumulative, or whether the non-complying activity status applies if any one of the requirements is met (note this is not how it reads); • Same issues with rules as for earth disturbance and vegetation destruction (particularly in relation to 16(3), 16(4) and (17(b)).
(3) Any resource consent granted for a water take activity for the purpose of restoring a natural wetland to its natural hydrological state must include the following conditions: a) a qualified wetland ecologist and hydrologist must establish the natural hydrological regime of the natural wetland; b) the person undertaking the activity is subject to the standard wetland monitoring obligation for the duration of the consent.			
(4) A water take activity is a discretionary activity if: a) the work is done for: i. public flood control or drainage; or ii. building, maintaining, or operating any new or existing nationally significant infrastructure; and b) the work will: i. result in a greater than 0.1 m change beyond the natural wetland's annual median water level; and ii. cause changes in the natural wetland's seasonal (summer to winter) water level fluctuations (minimum or maximum water levels) that have a detrimental effect on the extent, ecological quality (type and diversity of aquatic plant and animal communities) or functioning of the natural wetland.			
17 Water take activities – non-complying activity			
A water take activity is a non-complying activity if: a) it is not a discretionary activity; and b) the work will: i. result in a greater than 0.1 m change beyond the natural wetland's annual median water level; and ii. cause changes in the natural wetland's seasonal (summer to winter) water level fluctuations (minimum or maximum water levels) that have a detrimental effect on the extent, ecological quality (type and diversity of aquatic plant and animal communities) or functioning of the natural wetland.			
Subpart 3 River bed infilling			
18 Infilling bed of river			
Discretionary activity (1) The infilling of the bed of a river is a discretionary activity if it is part of an activity: a) designed to restore or enhance the natural values of the stream or of any adjacent or associated ecosystem; or b) done for the purpose of building, maintaining, or operating new or existing nationally significant infrastructure; or c) required for the purposes of flood prevention or erosion control; or d) for which there are no practical alternative methods of enabling the activity to take place.	Particularly relevant for Tauriko West – reclaiming streams and farm channels. Likely to be a non-complying activity as currently drafted.		These are important standards and of particular relevance to Tauriko West. While the intent of the provision is supported, the drafting is not clear and potentially contradictory. TCC has several submission points: • Discretionary activity classification status is overly restrictive for restoration/enhancement works and the provision of essential public services. • As previously identified, 'infilling' needs to be defined and preferably replaced by the term 'reclaim'. It also needs to be made clear whether the rule relates to full reclamation and or partial modification. • The purpose of flood prevention and erosion control should be broadened to include public drainage, including the use and enhancement of green infrastructure. • Unclear how (1)(d) will be interpreted and applied as a standard without additional guidance. • Clause (2) is problematic for the same reasons as other activities (see above); • It is not clear what is required by monitoring and what 'declining' means in the context of these standards. If a consent is granted to 'infill' a stream, what is the expectation
(2) Any resource consent granted for the discretionary activity must include at least the following conditions: a) to the extent that the adverse effects cannot be avoided, remedied, mitigated, any residual adverse effects on the river must be offset to achieve a no net loss; and b) the person undertaking the activity must: i. monitor the condition of the river for the duration of the consent; and ii. inform the consent authority if the monitoring demonstrates that the ecological condition of the river is declining.			
Non-complying activity (3) Infilling the bed of a river is a non-complying activity in any other case.			

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			for declining stream conditions? Is this in the stream being reclaimed, or in the stream that has been created as an offset? • For non-complying activity not clear how this will be assessed under the relevant Regional and City plans that may have other policies of relevance.
Sub-Part 3 – Fish Passage			
19 Application of subpart 3 (1) This subpart applies only in respect of structures constructed after the commencement date. (2) Clauses 21 and 22 (about culverts and weirs) do not apply in respect of any river identified by the relevant regional council as one where fish passage for undesirable fish species is to be impeded (in accordance with the requirements of the National Policy Statement for Freshwater Management 2019), except that any person constructing a culvert or weir on such a river must provide the following to the relevant regional council within 20 working days of the construction being completed: a) the standard fish passage information; and b) for culverts, information on at least the type or shape of culvert (e.g. pipe, box, arch), material, height, width, length, drop height, slope, culvert substrate, and alignment; and c) for weirs, information on at least the type of weir, crest shape, width, slope, height, presence of wetted margins, material, backwater distance, and substrate.	Will apply to Tauriko West – but probably not a major issue.	Consents for culverts for Te Tumu could be reviewed under RMA s128 if technical design considerations not met.	Fish Passage standards apply to new structures installed after commencement of the NES.
20 Definitions for subpart 3			
In this subpart: **bankfull discharge** means the discharge that fills a stable channel to the elevation of the active floodplain **bankfull width** means the width of the river channel at the bankfull discharge **culvert** means: a) a pipe or box structure that conveys stormwater flow; or b) the entire structure used to channel a water body **culvert span** means the width of the culvert at the point it intersects with the stream bed **flap gate** means a hinged gate that controls tidal or floodwater fluctuations, such as a tide gate or flood gate **maximum allowable water velocity** is a measurement defined by the requirements of the weakest species or weakest life stage of a species **passive flap gate** means a flap gate that opens due to a positive head differential on the upstream side, and closes due to a positive head differential on the downstream side, but is not controlled by any powered (e.g. electric or hydraulic) automated gate system **standard fish passage structure information** means the following information about an in-stream structure: a) location (Easting and Northing); b) upstream- and downstream-facing photograph(s) of the completed structure sufficient to allow evaluation of the structure's maintenance requirements over time and likelihood of fish passage impedance; c) wetted width and bankfull width of the stream prior to works; d) type of structure (i.e. culvert, ford, weir, dam, or flap gate).			Definitions appear poorly thought out. TCC submits on the following: • Bank full discharge and reference to 'stable channel' are not clear. Should 'stable channel' be bed of the river as defined in the RMA? • Similarly, is river channel the 'river bed' as defined in the RMA? • The definition of culvert appears to include all stormwater pipes. • Culvert span should probably refer to the length of the culvert, not its width. • A flap gate may control all stormwater flows, not just flood flows. This then raises questions regarding the interpretation of passive flap gate. • maximum allowable water velocity does not appear to be used anywhere and would be unworkable without further definition.
21 Culverts			
Permitted Activity (1) The construction of a culvert that is fixed in or on the bed of a river is a permitted activity, provided the following conditions for fish passage are met: a) the culvert complies with all relevant rules in the relevant regional plan; b) the culvert provides for the same fish passage as exists naturally in the area of river bed it occupies; c) the mean cross-sectional water velocity in the culvert is equal to or less than the mean cross-sectional water velocity found in immediately adjoining stream reaches; and			The permitted activity rule includes technical requirements that we are not able to advise on. The permissive framework should be supported if possible. However, we note that the span criteria for culverts in small streams (1.3 times width if less than 3 metres) may result in culverts that are substantially larger than the stream channel itself. • TCC supports the permitted activity rule, but note that the permitted culvert widths appear to require a culvert that is significantly wider that the stream channel width.

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d) the culvert span is: i. equal to or greater than 1.3 x stream bankfull width for streams with a bankfull width ≤3 m; or ii. equal to or greater than 1.2 x stream bankfull width + 0.6 m for streams with a bankfull width >3 m; e) the culvert is an open bottom culvert or the culvert invert is placed so that a minimum of 25% of the diameter of the culvert is below the level of the river bed; f) the stream bed substrate is present over the full length of the culvert, and it is stable for at least four fifths of the time; g) the culvert provides for continuity of geomorphic processes (such as the movement of sediment and debris); h) the person constructing the culvert must provide the following to the relevant regional council within 20 working days of construction being completed: i. the standard fish passage structure information; ii. information on at least the type or shape of culvert (e.g. pipe, box, arch), material, height, width, length, drop height, slope, culvert substrate, and alignment.			
Discretionary activity (2) The construction of a culvert that is fixed in or on the bed of a river that is not a permitted activity is a discretionary activity.			Culverts are generally required for road crossings and other purposes. If the primary issue is fish passage, then a controlled or restricted discretionary activity may be more appropriate for culverts that do not meet the permitted activity standards, but which can provide appropriate fish passage, up to a maximum length. TCC submits: • Given the purpose of the standards is to provide for fish passage, the consent activity status for culverts that cannot meet the permitted activity standards could be controlled or restricted discretionary activities for culverts up to a specified maximum length with matters of control/discretion relating to fish passage, velocities etc.
(3) Any resource consent granted for the discretionary activity must be subject to the following conditions: a) the culvert is not contrary to the regional council's objectives for aquatic life (as required by the National Policy Statement for Freshwater Management 2019); b) the person constructing the structure must provide the following to the relevant regional council, within 20 working days of construction being completed: i. the standard fish passage structure information; ii. information on at least the type or shape of culvert (e.g. pipe, box, arch), material, height, width, length, drop height, slope, culvert substrate, and alignment.			Clause (a) is a matter of assessment and not one that can be included as an enforceable condition on a consent.
22 Weirs			
Permitted activity (1) The construction of a weir that is fixed in or on the bed of a river is a permitted activity provided the following conditions for fish passage are met: a) the weir must comply with all relevant rules in the relevant regional plan; b) the weir provides for the same fish passage as exists naturally in the area of river bed it occupies; c) the weir fall height is less than 4 metres; d) the slope of the weir is: i. no steeper than 1:30 for a rock-ramp weir, unless the council has identified that inanga or smelt (and any other weakly-swimming species identified by council) do not require passage; ii. equal to or less than 1:10 for a conventional weir design where fall height is ≤1 m; iii. equal to or less than 1:15 for a conventional weir design where fall height is 1-4 m; e) roughness elements are present on the weir face, comprising mixed grade rocks of 150-200 mm diameter which are irregularly spaced no more than 90 mm apart to create a hydraulically diverse flow structure across the weir; f) the weir has a V-shaped lateral profile, sloping up at the banks and providing a low-flow channel in the centre, with the lateral cross-section slope between 5-10°;			Permitted activity rule includes technical requirements that we are not able to advise on.

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g) the person constructing the weir must provide the following to the relevant regional council within 20 working days of construction being completed; i. the standard fish passage structure information; and ii. information on at least the type of weir, crest shape, width, slope, height, presence of wetted margins, material, backwater distance, and substrate.			
Discretionary activity (2) If the construction of a weir that is fixed in or on the bed of a river is not a permitted activity, it is a discretionary activity.			
(3) Any resource consent granted for the discretionary activity must include a condition requiring the person responsible for the construction of weir to provide the following to the relevant regional council within 20 working days of construction being completed: a) the standard fish passage structure information; b) information on at least the type of weir, crest shape, width, slope, height, presence of wetted margins, material, backwater distance, and substrate.			
23 Passive flap gates			
(1) The construction of a passive flap gate is a non-complying activity.			This is an unusual rule as currently expressed as construction of something is not controlled by the RMA. Presumably it relates to damming, diverting or the placement of a structure in the bed of a river. TCC submits: • It is not clear what the activity is under the RMA. Presumably this relates to a structure on the bed of a lake or river – or is it intended that this is a land use rule that applies more widely? • Non-complying activity status appears overly restrictive in all circumstances. Flap gates are often used to avoid saline effects on pasture etc. in drained areas, so they perform an important role. Restricted discretionary activity may be more appropriate, particularly given issues are confined.
(2) Any resource consent granted for the non-complying activity must be subject to the following conditions: a) the passive flap gate must comply with all relevant rules in the relevant regional plan; b) the person constructing the structure must provide the following to the relevant regional council, within 20 working days of construction being completed: i. the standard fish passage structure information; ii. at least, the number of flap gates, dimensions, material, and whether any culverts present.			Clause (a) is inappropriate as a condition of consent because resource consent may be required under the Regional Plan.
24 Dams, fords, and non-passive flap gates			
Every person who constructs a dam, ford, or non-passive flap gate must provide the following to the relevant regional council, within 20 working days of the construction being completed,: a) the standard fish passage structure information; b) for fords, at least drop height, substrate, width, length, material, presence of any culverts: c) for dams, at least height, whether spillway present, whether fish pass present; d) for non-passive flap gates, at least the number of flap gates, dimensions, material, and whether any culverts present.			