



# Tairāwhiti Regional Freshwater Planning Advisory Group – Hui 11

**Date: 9 October 2024**

**Title of report: Water quantity management – Direction for Policy Development**

**Report no: 1**

**Report author: Adele Dawson, Consultant – Incite**

---

## Purpose of this report

This report summarises the feedback from the Freshwater Advisory Group on the Water Quantity topic and outlines the proposed direction for policy development.

Some clarification is sought on specific topics to inform the development of options to address the issues identified.

## Outcomes sought

Members of this Advisory Group:

- consider the summary of feedback provided, contribute any further thoughts and correct any inaccuracies,
- consider the specific topics and discuss the potential options to provide guidance for refining the scope of the policy response.

## Getting ready for the hui

Please consider the questions in this report ahead of the next hui. This will aid the discussion at the hui.

## Contents

<b>1.</b>	<b>Background</b> .....	<b>3</b>
1.1.	Summary of previous meeting and scope .....	3
<b>2.</b>	<b>Te Mana o te Wai and Water Allocation</b> .....	<b>5</b>
2.1.	Applying Te Mana o te Wai to water allocation .....	5
<b>3.</b>	<b>Values based allocation</b> .....	<b>6</b>
3.1.	Advisory Group preferred approach .....	6
3.2.	Testing how a values based allocation approach could work .....	6
3.3.	Modified values based allocation approach .....	8
<b>4.</b>	<b>Mana whenua allocation</b> .....	<b>9</b>
4.1.	Advisory Group Feedback .....	9
4.2.	Potential options .....	10
<b>5.</b>	<b>Addressing over-allocation</b> .....	<b>12</b>
5.1.	Timeframes for adapting to revised limits .....	12
5.2.	Developing a flexible framework.....	12
5.3.	Water Sharing/Water User Groups/Collective Management .....	13

# 1. Background

## 1.1. Summary of previous meeting and scope

The Advisory Group has discussed Water Quantity in three previous hui:

- 24 April: Tairāwhiti and regulatory context, issues
- 29 May: Default limit setting and allocation approaches
- 10 July: Addressing over-allocation and municipal/community water supply

This report consolidates the discussions and feedback from the meetings we've had so far. Feedback on the Municipal and Community Water Supplies is summarised in Report 3.

We are seeking the Advisory Group to confirm our understanding and provide further clarification on specific topics. The summary below recaps the key messages.

### What are the issues?

<p><b>First in, first served allocation can be considered inefficient.</b></p>	<ul style="list-style-type: none"> <li>• It is difficult for new users to gain access to water in over-allocated catchments.</li> <li>• Local businesses or businesses benefiting Tairāwhiti should be prioritised over businesses exporting profits out of the region.</li> <li>• Mana whenua should also have access to water.</li> </ul>
<p><b>Transitioning to any new management framework will be complex and potentially result in significant impacts on businesses and communities</b></p>	<ul style="list-style-type: none"> <li>• Any loss of current allocation will cause economic and social (e.g. employment) losses in our community.</li> <li>• Any new allocation system must recognise the reliance on water by businesses to support economic and social wellbeing.</li> <li>• Recognise that different businesses have differing capability to adjust.</li> </ul>
<p><b>The current management approach may not give effect to Te Mana o te Wai</b></p>	<ul style="list-style-type: none"> <li>• There must be a common understanding of what Te Mana o te Wai looks like.</li> <li>• Re-balancing of water management to give effect to Te Mana o te Wai will have implications for communities.</li> <li>• If you take water, you need to give back to the environment (using other water or other means).</li> <li>• Ensure resources are used and treated as taonga.</li> </ul>
<p><b>There is a perceived ownership of water</b></p>	<ul style="list-style-type: none"> <li>• Water permits are a property right in all but name. Water is bought alongside property.</li> <li>• Transfers of un-used water allocations support a monopoly.</li> </ul>
<p><b>Demand for water will/does exceed supply</b></p>	<ul style="list-style-type: none"> <li>• Climate change will affect water supply and demand.</li> <li>• Alternative water sources, that may include storage or MAR, need to be enabled.</li> </ul>

<p><b>Additional information is needed to make decisions on allocation</b></p>	<ul style="list-style-type: none"> <li>• Expert technical assessment and evaluation is needed to determine impacts of new systems on businesses and community.</li> <li>• Need to determine if water is being used efficiently.</li> <li>• Further information on domestic and industrial uses is required.</li> </ul>
<p><b>The current allocation approach is inflexible</b></p>	<ul style="list-style-type: none"> <li>• A more dynamic and flexible approach is needed to manage any increases in environmental flow or decreases in take limits.</li> </ul>

Across Hui 8 and 9 the Advisory Group discussed four main topics. The feedback on approaches to limit setting, allocation and addressing over-allocation is summarised below.

### **Approaches to limit setting**

- Some catchments may be too small to allow water takes.
- Mahinga kai species (as determined by mana whenua) could be used to determine appropriateness of limit setting methodology.
- Default limit methodology must consider mahinga kai, community/iwi significance and wāhi tapu.

### **Allocating take limits**

- Preference for a values based allocation framework that prioritises water uses that achieve community, environmental and cultural outcomes and recognises existing uses. Reliant on a tender system to call in applications at the same time, with scoring matrix developed to assess applications.
- Allocation via auction or ballot does not give effect to Te Mana o te Wai.
- The status quo is not preferred as it can incentivise inefficiency, is unequal and does not provide for mana whenua rights and interests.
- Mana whenua should be able to access allocation (contest up to half).
- Allocation by land area would be equitable but would put existing operations at risk.
- There could be a different approach to allocation within the Waipaoa Catchment vs the rest of the region.
- Mahinga kai gathering and associated contact with water could be considered a human health need. Swimming for recreation may also not be considered necessary for "physical health".
- Allocation for social, cultural and economic uses should be prioritised. The priority should recognise (in order of priority) human health needs, animal welfare, plant needs and finally other uses.

### **Addressing over-allocation**

- MAR can be used to address groundwater quality issues and provide storage to enable further takes.
- Need to look at whether the current crops or land use is in the most appropriate locations.
- Preference for longer transition period but accept that this may require a larger reduction.
- Methods must be available to adapt to any reduced take limits or increases to

- environmental flows such as MAR or collective water management.
- Water storage is supported, may require public/private partnership.
- Support for water user groups and short-term transfers to manage low flow periods.

## 2. Te Mana o te Wai and Water Allocation

### 2.1. Applying Te Mana o te Wai to water allocation

The NPS-FM allows communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems in their region. In Hui 8 we discussed what water uses fit within the second and third tiers of the Te Mana o te Wai hierarchy.

Feedback from the Advisory Group on this topic was limited and therefore we are seeking comments on how the Te Mana o te Wai hierarchy applies to water allocation. Feedback that was provided noted:

- Mahinga kai gathering can be considered a human health need.
- Drinking water supplies must be protected from third obligation uses.
- Contact activities such as swimming could be seen as either a second or third obligation water use.
- It could be appropriate to prioritise third obligation uses.

Based on the feedback, it is proposed that water quantity management gives effect to Te Mana o te Wai by:

#### **Water Quantity Management:**

- Firstly, provides for the health and well-being of water bodies and freshwater ecosystems, including mahinga kai species.
- Secondly provides for the health needs of people, including drinking water, primary contact and cultural immersion activities and mahinga kai gathering or practice.
- Thirdly, provides for all other social, economic and cultural needs in the following order of priority, to the extent practicable:
  - Social and cultural wellbeing
  - Animal health and safety
  - Permanent horticulture
  - Annual horticulture
  - Other economic uses that do not relate to growing plants or animals.

### Questions for the Advisory Group

- ❖ Should mahinga kai gathering, cultural immersion or contact recreation activities be considered human health needs?
- ❖ Do you agree with prioritising uses that fall under the third obligation? If so, do you agree with the suggested order of priority under the third obligation?
- ❖ Should this application of Te Mana o te Wai apply across the new Regional Freshwater Plan (i.e not just to water quantity but water quality, wetlands and beds of rivers and lakes)?

## 3. Values based allocation

### 3.1. Advisory Group preferred approach

During discussions on approaches to allocation, the Advisory Group put forward an alternative to the current 'first in first served' approach – "Values Based Allocation". This approach was described as:

- Based on a tender process which would call in applications for new water so they can be assessed at the same time. Existing consents have common expiry dates which will enable assessment at a similar time.
- Using a values matrix to assess consents seeking to abstract water.
- The value matrix enables a variety of different matters to be evaluated, including social and cultural values.
- The values matrix would prioritise living things over other economic uses.
- The values or priorities for water use would be flexible to incorporate new or emerging uses that the community supports.
- The matrix would support existing uses.

### 3.2. Testing how a values based allocation approach could work

To determine if a values based allocation approach is possible under the current RMA, Council sought legal advice on whether it is lawful under the current legislation and secondly the legal risks of this approach.

The legal advice obtained concludes that:

- First in, first served allocation is not the only lawful approach for allocating resources under the RMA.
- It is lawful for Councils to allocate water using a values based approach but there are a number of legal risks associated with doing so.

The legal risks highlighted included:

- The regional plan will need to set clear objectives and policies in relation to allocation to support rules that apply a values based approach to allocation.

- The cost and benefits analysis to support the plan provisions (Section 32 analysis) will need to be robust and thorough and test the values based approach against other potential options, including the status quo.
- Robust economic analysis will be necessary particularly if there is any need to 'claw back' water from existing users.
- The tender process cannot lawfully influence the order of processing of consents. Consents are still required to be assessed in the order by which they are received.
- It is also not lawful to compare resource consent applications and prioritise those that better achieve the values matrix. Each consent application must be assessed against the plan and decided on its own merits.

Based on this advice, we are proposing to continue examining how a values based approach to allocation could be adopted. The sections below seek to gain further details from the Advisory Group on what this could look like.

### **What does a values based allocation approach look like?**

From the Advisory Group's feedback some analysis has been undertaken to determine how a values based approach to allocating water could work in the new Regional Freshwater Plan.

To implement this approach, we would need to:

- Establish a tender process to 'call for' applications at a single time. This could be achieved via the common expiry date on existing consents. For catchments where new limits are being proposed, a future deadline may need to be set.
- Develop a values matrix to be used to assess applications received by tender. The matrix and plan provisions will need to enable applications to be assessed individually, in the order they are received. The tender process may allow this to be at the same, or similar time, however.
- Establish the values, their weighting and a scoring system to assess applications.
- Enable the values, weighting and scoring system to be amended to respond to emerging water uses or changing values.

#### **Questions for the Advisory Group**

- ❖ Do you have any feedback on what is required to implement this values based allocation approach?
- ❖ Are there any further steps or matters to be considered?

### **Potential challenges in implementing a values based approach to allocation**

Based on the values based approach to allocation described by the Advisory Group, there are some challenges to its implementation that have been identified:

- Making a 'call' for tenders could encourage speculation and does not address future, unknown uses that cannot be predicted. Any allocation method needs to be able to provide guidance for assessing each individual application when it is

received. It isn't clear what would occur when a take limit is being approached and a proposed new use scores higher on the matrix than existing uses, but cannot be granted as there is insufficient allocation available.

- As each consent application is assessed on its own merit, the scoring system (or alternative) must provide sufficient guidance to assess if an application meets the values or not. The level to achieve a “pass” will need to be carefully considered in areas of over-allocation as this will affect existing users and any cuts need to be justified through the costs and benefits analysis. This is particularly important if water is to be redistributed between existing and new users.
- If the values matrix is to be flexible, and revised to address changing priorities or uses, it may not be appropriate to include within the regional plan. Any changes to criteria in the regional plan will need to be done via the statutory processes which can be costly and time consuming. If it sits outside of the regional plan, it does not have the same statutory weight and this approach may not be defensible. Additionally, if the matrix is changed there is less certainty for water users.
- The identified values and scoring system (included in the Plan) will need to be robust and supported by evidence. Community engagement on values and freshwater outcomes would assist in supporting this, however it is anticipated that significantly more information would be required to develop this matrix. For example, an understanding of how to determine local vs regional vs national benefits, or how to assess social and cultural priorities and then score those benefits accordingly.

**Question for the Advisory Group**

- ❖ Do you have feedback on the matters to be resolved and how they could be addressed?

**3.3. Modified values based allocation approach**

In investigating the potential implementation of a values based allocation approach, we have identified an alternative for the Advisory Group's consideration. This alternative has been developed by taking the principles of the values based approach and determining how different parts of the overall water quantity management framework could reflect prioritised community values. Table 1 sets out some proposed options.

<b>Table 1 – How to adopt a values based approach to allocation</b>	
Limit setting methodology	Adopting a sector priority approach, with different allocation blocks for specified uses would enable some priority to be given to broad categories of use. For example, an allocation for mana whenua or permanent horticulture. The size of the block and its environmental flow limit would demonstrate the level of priority assigned.



Recognise and prioritise values	Objectives or policies could seek to promote or recognise certain values or outcomes of water use. For example, adopting an enabling approach for certain type of water uses or restricting less preferred activities.
Phasing out over-allocation	If it is necessary to cut actual use of water, policy could direct a different cut proportion for different types of water use.
Duration	Consent applications that best provide for the desired outcomes and values could be granted longer durations to recognise this.
Water shortage direction	If a water shortage direction is issued, the outcomes to be protected or water uses to be prioritised as far as possible may be listed.

To develop plan provisions that reflect the prioritised values, those values will need to be determined and set in the TRMP. It could be as simple as implementing the Advisory Group's Te Mana o te Wai interpretation as described above, or it could be more directive and address matters such as:

- Social and cultural benefits
- Efficiency of infrastructure and irrigation application
- Best practices applied
- Value of existing investment
- Takes to storage or for MAR
- Positive environmental or cultural outcomes

#### Questions for the Advisory Group

- ❖ Do you have any feedback on the alternative approach to reflect values in the water allocation provisions of the new regional plan?
- ❖ Of the suggestions above, are there options for prioritising values that are not supported?
- ❖ What values or water uses should have a higher priority?

## 4. Mana whenua allocation

### 4.1. Advisory Group Feedback

The Advisory Group has expressed general support for providing for mana whenua rights and interests in terms of water allocation. Feedback noted challenges around over-allocated water quantity zones and how this would be achieved. Discussion at the hui centred on how over-allocation could be addressed to provide access to water for mana whenua.

## 4.2. Legal advice

To provide certainty that progressing policy options for providing a mana whenua water was lawful, Council sought legal advice. The legal advice obtained confirms:

- Providing for an allocation of freshwater for mana whenua use may be legally valid but will depend on the details of the proposal.
- The purpose of the allocation must be clear and needs to consider how it fits with Te Mana o te Wai. Some parts of the proposed cultural use of water could fit within obligation 1 or 2 of the Te Mana o te Wai hierarchy.
- Rules cannot allocate water to particular applicants or individuals.
- There should be objectives and policies to support the allocation, preferably including within the Regional Policy Statement.

## 4.3. Potential options

As outlined above, under the RMA, a resource cannot be allocated to a group or person, it can only be allocated to “types of activities”. Therefore, the purpose of any allocation to recognise mana whenua rights and interests will need to be clear within the new freshwater provisions.

Northland Regional Council has a proposal to provide a mana whenua allocation, the proposed use of that water is described as<sup>1</sup>:

- Contribution to environmental enhancement; or
- Wai for domestic use by marae and papakāinga; or
- Any other use of wai, provided that:
  - it includes contribution to a Te Mana me te Mauri o te Wai fund<sup>2</sup> managed by the Northland Regional Council in consultation with tangata whenua,
  - the fund will be used to provide for development of Māori wellbeing;
  - the contribution to the fund is proportional to the amount of reserved wai being taken and any commercial returns resulting from the application;
- The development of Māori owned land and land returned to a Post-Settlement Government Entity through a Treaty Settlement.

In other locations, allocations have been proposed for ‘mahinga kai’ purposes.

### Question for the Advisory Group

- What should the purpose of water allocated for mana whenua use be/how should we determine the purpose?

---

<sup>1</sup> <https://nrc.govt.nz/media/uzsdawp/the-draft-freshwater-plan-change-targeted-water-allocation-policy.pdf>

<sup>2</sup> This would be via rules in the regional plan setting out required financial contributions and address the purpose of the contribution, how the level of contribution would be determined, when the contribution would be required and how it would be allocated.

**Table 2** sets out different ways mana whenua rights and interests in water allocation could be provided for. One single option could be adopted for the region, or different approaches could be taken in different circumstances (such as where water is currently over-allocated vs where water is not currently abstracted).

<b>Table 2 – How to provide for Māori Rights and Interests: Water Allocation</b>	
Option 1: % of allocation for use by mana whenua	<ul style="list-style-type: none"> <li>• This option would set a percentage of any take limit that is then made available for mana whenua use.</li> <li>• Northland Regional Council has proposed a 20% default allocation. There is precedence for this with the Fisheries Quota Management System.</li> <li>• The percentage could be different in parts of the region, or apply equally for all water quantity zones. For example, in over-allocated zones such as the Makauri Aquifer, a reduced limit may be considered appropriate to reduce impacts on existing users. Alternatively, a larger limit could apply in catchments with higher proportions of Māori owned land.</li> </ul>
Option 2: Allocation determined by mana whenua during catchment plan process in accordance with principles	<ul style="list-style-type: none"> <li>• This approach would apply to any new take limits developed during the catchment planning process, or future limit setting processes.</li> <li>• This option leaves the quantity of the allocation to be determined through engagement with mana whenua. To assist in this process however, some principles or matters for consideration could be developed as direction on how to come to an allocation amount.</li> </ul>
Option 3: Allocation based on developable Māori land	<ul style="list-style-type: none"> <li>• This approach would require analysis of land that is yet to be developed and potential development options to determine an appropriate allocation volume.</li> <li>• This option may need to consider any water allocation held by mana whenua already.</li> </ul>

#### **Questions for the Advisory Group**

- ❖ What are your views on the proposed options?
- ❖ Should the same approach be taken across the region, or tailored to the catchment circumstances?

## 5. Addressing over-allocation

### 5.1. Timeframes for adapting to revised limits

For some water quantity zones environmental flow limits and allocations are likely to be revised. The practical and economic implications for water users are not yet known but could be significant and therefore the timing of implementing a new regime is fundamental to the level of impact.

The matter of transition has been a key concern for the Advisory Group and the subject of several discussions. Based on this feedback, the principles for setting timeframes to meet new limits we are proposing to adopt are:

- Where there is the potential for moderate (or greater) practical and economic impacts, interim limits will be used, providing a staged approach to implementation.
- Longer timeframes will be adopted (10 years) but this will necessitate larger reductions than if shorter stages were used.
- Consent terms of 5 years will generally apply in over-allocated catchments. If a renewal is sought prior to a staged reduction, the consent applicant will be required to demonstrate how their adaptation plans are tracking. The renewal will be an opportunity for Council to ensure planning for the reduction is underway and for any information needed to be collected.
- Timeframes for achieving final environmental flow and take limits will consider the long-term vision.

#### Question for the Advisory Group

- ❖ Do you support the proposed principles for setting timeframes for water quantity limits? If not, what is the preferred approach?

### 5.2. Developing a flexible framework

It is expected that in the Waipaoa Catchment existing environmental flow and take limits will be revised. The subsequent impacts on existing water users may be minimised by a MAR scheme or water storage solution enabling augmentation. This may therefore reduce the need for reductions in abstraction, for example from the Makauri Aquifer.

While the Advisory Group support these solutions and have confidence they could be implemented in some form, the new freshwater provisions will need to establish a framework that can manage situations where a MAR or water storage solution exists and where it does not. The framework will therefore need to be flexible to address any particular proposal, as at this stage the scale or impact of these solutions is not clear.

Other regions have faced similar challenges:

- Tasman's Resource Management Plan set out environmental flow and take limits for the Waimea River basin which addressed a scenario where the consented community dam was not constructed and if it was constructed. The provisions also differentiate

between water users that are affiliated with the dam and those that are not.

- Environment Canterbury's Land and Water Regional Plan, Section 15A Waitaki and South Coastal Canterbury was prepared to recognise proposed irrigation scheme. The provisions were drafted to recognise land use intensification the schemes allowed and the compensation proposal for wetland enhancement.
- The Hawkes Bay Regional Council's Tukituki Catchment Plan increased the minimum flow for the Tukituki River to improve the health of the river. The proposed Ruataniwha Scheme was considered a long-term water supply solution for Central Hawkes Bay and augmentation of the Tukituki River would improve river flows and provide water security for irrigators, compensating for the increased minimum flows. The catchment plan provisions enable additional groundwater to be abstracted provided river flows are augmented and state that the minimum flow and allocation limits do not apply to takes downstream of a dam and those water users are members of the Community Irrigation Scheme taking water that has been released from the dam.

Unlike the Tasman and Canterbury situations, consents for MAR or water storage have not been granted and therefore there is greater uncertainty. To provide for these solutions coming on line, it is proposed to address this via policies that manage the freshwater 'accounting' required. The plan can set out:

- The taking of water that has been augmented or discharged into an aquifer for the purposes of subsequent abstraction is not counted in allocation limits.
- The primary (first) take of water must be within the environmental flow and take limits set in the plan.

This means that the taking of surface water for a MAR scheme or other augmentation must comply with the environmental flow and take limits set, but the subsequent retaking of that water from the aquifer is not counted in the groundwater allocation. This may result in groundwater permits having conditions that relate to primary takes which are counted in the groundwater allocation and those that are not.

The Advisory Group have discussed outcomes a MAR scheme may need to achieve, including addressing groundwater level decline. Outcomes such as these would be set in the plan policy and during the consenting process, it will need to be determined how manage the amount of water abstracted from the aquifer in relation to the quantity injected.

#### **Question for the Advisory Group**

- ❖ Any feedback on the proposed approach to managing MAR or surface water augmentation within environmental flow and take limits?

### **5.3. Water Sharing/Water User Groups/Collective Management**

Advisory Group members were supportive of water user groups as a tool to manage impacts on water users during periods of low flows. Water user groups have been established in other parts of the country and further information on how the new freshwater provisions could support their operation in Tairāwhiti has been included for consideration.

As highlighted above, it may be that collective management of water amongst water users may occur not only when there is low flows but at other times of the year.

The TRMP currently mentions that water sharing amongst groups of water permit holders in the same water quantity zone is provided for as a way of implementing restrictions. This direction should be taken further to describe how water sharing can be implemented. Requirements for water sharing are suggested to include:

- Not exceeding individual take limits on consents and collective limits.
- Telemetered water measuring data that is available to Council.
- The water user group provides a plan to Council that sets out:
  - The agreement amongst water users and the method for water sharing to ensure limits are not exceeded.
- Measuring to be undertaken and data to be provided to Council as per individual consent requirements and water sharing plan.

Consent conditions on water permits would allow for sharing to occur where an agreement is in place. Depending on the timing of consent renewals or establishing the water user group, the group may be formed as consents are processed or following the issuing of water permits. The water user group would submit their agreement to Council for approval prior to commencing water sharing.

#### **Question for the Advisory Group**

- ❖ Any feedback on the proposed approach to enable water user groups/collective management?

## **6. Next Steps**

Technical work is still underway to inform policy development for the new freshwater provisions. This is for both water quantity and water quality topics. Following our final Advisory Group hui for 2024 in November, we will look to reconvene the Advisory Group in 2025 when the technical work has been completed.