

Next Steps for Fresh Water

Consultation Document February 2016

Hawkes Bay Regional Council Submission

Key Reform Proposals - summary

The Next Steps for Freshwater discussion document addresses a number of topics and suggests a range of proposals from new initiatives and regulations to further development of existing programmes relevant to Hawkes Bay Regional Council. They include:

Maintain or Improve Overall Water Quality

The terms used and the intent of this direction in the NPSFM are to be further amended. The council submission points out that there is still lack of clarity.

NOF Attributes

The use of MCI as an attribute is to be considered, but difficulty in assessing costs prevent adopting it within the NOF. The Council suggests this attribute could be made a compulsory attribute with Councils required to set thresholds at a local scale.

Significant Infrastructure

The NPS provides a mechanism for exemptions. None are likely to be sought for HB waters as any water bodies below national bottom lines are expected to be managed according to established timeframes. The council observes that provisions for exemptions must be carefully managed in light of risk of unravelling overall intent of freshwater reforms.

ICOLLS

Application of NPSFM to ICOLLS clarified. This has implications for some HB coastal lakes. Clarity about scope of meaning and how attributes are to be set is sought.

Stock Exclusion

National consistency is sought and regulations are proposed. The concept is supported, but concerns expressed about the lack of flexibility in responding to site specific concerns about local costs and benefits. New provisions for fines are supported.

GMPS and technical efficiency

Support this concept. Suggest that good farming practice should not be managed through resource consents at council by council scale and that better management and more innovative cost effective approaches could be achieved through combined primary industry and government working at a national scale. Notes value in having good practice design also specified for urban development.

Water transfers

Support this concept and this Council is working with water users to explore more efficient and innovative responses to this challenge. Support provision of tools and advice.

Councils' ability to recover costs

Support this concept. Provisions for recovering costs associated with consents already quite robust however, ability to recover costs of monitoring permitted activities and consideration of a consent cost linked to mitigation of cumulative adverse effects of consented activities within a catchment also sought.

Te Mana o te Wai

Support integration with iwi values but concerned about clarity and possible implications of proposal in practical application and plan preparation.

Iwi and hapū relationships

Support concept but seeks standardisation of terminology and clarity of expectations in respect of RMA, proposed requirements in Resource Legislation Amendment, Treaty Settlements and NPSFM.

Water Conservation Orders

Support for aligning planning processes. However, further work is needed to align terminology in NPS and WCOs for management of outstanding values/water bodies. The need for criteria to determine outstanding is urgently required.

Support for Iwi, Water Supply

Assistance to ensure proper engagement with iwi at local levels is supported. Funding for water and wastewater supply for communities where contamination is an issue should be equitable and based on risk to people.

Funding for Freshwater Improvement

The council encourages government support for mitigation measures, particularly when public benefit and costs are significant. The criteria for funding are supported.

Swimming

Further direction on the management of water quality for swimming is sought by the Council submission.

Topics addressed

1. "Maintain", Improve" and "Overall"

The proposal is to apply this within an FMU rather than across a region. Further, councils will be given flexibility to "maintain" water quality within a band specified in the NOF. If no band is specified, then it is up to a council to demonstrate that the values chosen for the FMU are to be no worse off.

Question 1. Do you agree that overall water quality should be maintained or improved within a freshwater management unit rather than within a region? Why or why not?

Question 2. How should the attributes be applied, or the values protected, in giving effect to the requirement to maintain or improve overall water quality? Please explain.
--

Comment

"Overall" The assessment of 'overall' quality according to FMU is supported in principle, but the Council considers it just changes the scale of the problem from regional to FMU, but does nothing to aid interpretation as to what 'overall' quality actually means.

The discussion document states that some flexibility by using trade-offs is contemplated and states "some approaches may unduly constrain economic growth....." when it comes to setting objectives and limits. This implies that some objectives/limits could be set so as to allow further economic growth and that this will potentially decrease the state of some (all) attributes. However, at the same time water quality is to be 'maintained or improved'. The document goes on to say this is to be limited to movement within a specified NOF attribute band (not movement between attribute bands – even if it remains above the bottom line.)

The proposal does not clearly resolve whether the NPS contemplates "trading" quality in one water body for quality in another within the same FMU and how the technical, practical and social difficulties involved in this might be resolved.

Neither does the discussion document suggest any resolution of concerns raised in relation to time lags and management of historical sources of contaminants.

Note also that assessment of matter (f)(iv) in NPSFM Policy CA2 allows for choices between values and an implication that choice of a particular value can result in a lower (attribute) state being selected, depending on costs/implications (in f(v)). This is somewhat contrary to the direction in (e)(iii) where the most stringent attribute state must be adopted. Consider also that NPSFM Policy CA2(d) and (e)(i) require an attribute state to be assigned which implies any band may be chosen provided it is above the bottom and meets the needs of the relevant value.

While the directive to 'maintain' would appear to restrict discretion to move an attribute state downwards, this is not sufficiently clear given the wording in Policy CA2.

"Overall' needs to be better defined in its own terms as well as in relation to 'maintain or improve'. Specifically it should be clarified as either:

- (i) The overall water quality is to be determined in terms of the combined state of the applicable attributes in relation to the range of values for which a specific water body is to be managed (and whether movement is only contemplated within a band or if between-band movement is provided for)
- or

- (ii) The concept of ‘overall’ is to allow for reduction in the state of one or more attributes (movement between bands) applicable to the specified values of a water body provided there is an improvement in the state of one or more attributes in another water body within the same FMU.

If (ii) is intended, practical and technical difficulties remain as to how ‘overall’ quality is to be assessed and which require further elaboration. This is in relation to whether the same attribute state must be ‘traded’ in each water body or whether the overall quality is in relation to the value being considered in each water body. It is also in relation to the need to ‘maintain or improve’ and whether attribute states can move between bands.

HBRC recommends adopting the approach suggested in (i) provided some additional guidance material is prepared.

“Maintain or improve” Clarification that ‘maintain’ includes movement within a band is helpful and is supported.

However, while demonstrating that a value is ‘no worse off’ where there is no NOF attribute band, sounds theoretically possible and sensible, it could be hampered by lack of tools and comparative data. This needs to be accounted for in any amendments and subsequent guidance.

The applicable measures (or attributes) are likely to have varying levels of sensitivity for any particular value. For example both flow and e.coli levels are relevant attributes for swimming, however swimming is arguably much more sensitive to the e.coli state and could tolerate a reduction in flows and still be maintained at the desired level of protection (i.e is no worse off).

Consider also a situation where a river is valued for a variety of recreational and ecological values, and its state improves from C band to B band for E. coli, from C band to A band for periphyton growth, but deteriorates from B band to C band for nitrate. This delivers an improvement for both the recreational and ecological values in the river, but also a deterioration in an indicator for ecological value in the river (nitrate toxicity). Is that considered maintenance or improvement of ‘overall’ water quality?

As currently worded it appears this fails the “maintain or improve” requirement, because at least one key attribute has deteriorated. We think clear guidance should be given which includes examples like the one above.

The Council also suggests there is a need to provide for clarity in managing movement of attribute states between existing NOF bands from time to time both because of annual variability at a site and because for some attributes, movement within a band would mean a downwards trend.

For example, the nitrate toxicity band C for rivers allows for movement between 2.4 and 6.9 mg nitrate per litre. This sort of movement within a band represents a significant downward trend. It suggests that reporting whether or not maintenance or improvement is being achieved needs to be reported against trends.

Most attributes in Appendix 2 of the NPS are measured by annual statistics. The Council suggests that there is a need to consider amending the national bottom lines for attributes that can vary considerably from time to time, particularly e.coli and nitrate, to 5 year rolling averages rather than using annual statistics.

Otherwise the Council would seek that the NOF bottom lines allow for flexibility to account for the variable of scores between years.

Submissions

The reference to 'region' or FMU is not helpful in resolving the issues associated with understanding what 'overall quality' means and needs further clarification as to the relationship with any changes relating to 'maintain or improve'.

The Council supports clarification that maintenance of an attribute is within a specified band, allowing for movement within a band.

The provision in relation to 'maintain or improve' water quality so that a specified value is no worse off is also supported, provided further guidance about how 'no worse off' is to be assessed is also developed.

If "maintain or improve" is described in relation to movement within and not to a lower attribute state then the relationships between provisions of Objective A2, Policy CA2 and Appendix 2 attribute states need to be clarified.

Council also suggests that trend information is a much better indicator as to whether maintenance or improvement is being achieved rather than reporting against a specified band.

Consider use of 5 year rolling averages rather than bottom lines based only on annual statistics.

'Overall' needs to be better defined in its own terms as well as in relation to 'maintain or improve' The Council recommends:

The overall water quality is to be determined in terms of the combined state of the attributes selected by the community in relation to the range of values for which a specific water body is to be managed (and movement is only contemplated within an attribute band in order to be considered as "maintaining" water quality)

The Council also recommends provision of some additional guidance material.

2. MCI as a measure of water quality

The proposal is to continue to work on MCI as a measure of water quality and attribute for the NOF. Further work with the LAWF to investigate how this could be included is planned prior to its introduction.

Question 3. What is an appropriate way to include measures of macroinvertebrates in the National Policy Statement for Freshwater Management? What alternative measures could be used for monitoring ecosystem health?

Comment

The main challenge in using MCI as a NOF attribute described in the discussion document is the difficulty in assessing the impacts of including a 'bottom line' and therefore the costs of reaching any objective related to it.

This difficulty relates to the scale at which the assessment is undertaken and the nature and state of the water body under consideration. It would be extremely difficult to assess the costs of meeting any particular MCI state (or meet any specified bottom line) at a national level because it is so dependent on local conditions/state for the applicable water body.

“Overall results suggest that site MCI scores are related to land use through a complex chain of causality which makes isolating the role of specific variables difficult. The impact of limits placed on one effect pathway will depend on interactions with other pathways and will also be influenced by the local habitat. Catchment scale management may not result in a response in MCI scores without equal consideration of segment scale management and vice versa.” (Cawthron report 2507 June 2014)

The HBRC routinely uses MCI to monitor and report on health of its water ways. It considers that this biotic indicator is more time integrated and can be a much better indicator of overall stream health than analysis of chemical data from discrete samples. It considers MCI an excellent indicator of the biological health of a (wadeable) stream, and is an example of a multi metric index that that represents an integrated and holistic assessment of stream health.

In general, MCI scores in the headwaters of Hawkes Bay are ‘good’ to ‘excellent’, while MCI scores in more modified parts of our region are ‘fair’ to ‘poor’. MCI scores in the Karamu/Clive catchment were frequently poor, which prompted HBRC to undertake a targeted investigation.” (Hawke’s Bay Trends; The State of our Environment, Summary report 2009 – 2013)”

Research (Cawthron report 2507) indicates a strong link between MCI and catchment scale land cover, nutrients and habitat as well as habitat, nutrients and sediment at segment scales. This Cawthron study concluded that approximately two thirds of the deviance in MCI can be explained by measures of human impacts, which can be managed through an integrated approach to land (including riparian land) and water management. One third of the deviance was explained by natural environmental variation.

The Council notes that MCI meets the guiding principles used to develop the current set of attributes including:

- A link to the compulsory ecosystem value
- Established protocols for measurement and agreement among experts
- Relationship to limits and management. The causes and effects are known but are variable on a catchment by catchment basis. An assessment of the causes of low MCI scores and any potential solutions and their costs can be made at a local scale.
- Evaluation of current state at a national scale. With no bottom line there is no need to assess magnitude and location of failures to comply.

The Council supports inclusion of MCI as a compulsory attribute in the NOF. However, given the difficulty in assessing costs of setting a ‘bottom line’ at a national level, it suggests an alternative approach to the current framework to allow local investigations, solutions and assessment of costs in relation to any objectives for this attribute. This is consistent with the process outlined in Policy CA2 (a) –proposed and the impact of any MCI objective is still to be considered under Policy CA2 (f) at a local scale.

In the interim, the HBRC would support use of MCI as a mandatory attribute for reporting ecosystem health.

Submission

Amend Policy CA2(d) by adding new text to the end as follows; *“for those attributes specified in Appendix 2, assigning an attribute state at or above the minimum acceptable state for that attribute, where a minimum acceptable state is specified;”*

And insert into Appendix 2 for the ecosystem health value for wadeable Rivers (MCI needs to be applied to relevant ecosystems not all rivers) MCI as an attribute with the bands describing from D poor (<80) to excellent A state (>120). (with no national bottom line specified)

For example:

As per Stark&Maxted (2007)

Band	MCI MCI-sb	QMCI QMCI-sb	Class
A	> 119	≥ 6	Excellent quality, clean water
B	100 – 119	5 – 5.99	Good quality, possible mild pollution
C	80 – 99	4 – 4.99	Fair quality, probable moderate pollution
D	< 80	< 4	Poor quality, probable severe pollution

3. ICOLLs (Intermittently Opening and Closing Lakes and Lagoons)

The proposal is ensure the attributes apply to ICOLLs with the same band thresholds and bottom lines as lakes. ICOLLs generally include coastal lakes and lagoons that are open to the sea from time to time and the water can be salty or fresh. Science advice is that lake attributes and their bottom lines can be applied to ICOLLs.

Question 5. Do you agree with applying lake attributes and national bottom lines to intermittently closing or opening lakes or lagoons? Why or why not?

Comment

The Council notes the lack of a clear definition for ICOLL. It also notes that while lake attributes can be applied to ICOLLs, the differences in deep lake, shallow lake and coastal lake ecosystems and their vulnerability to change as a result of surrounding land use means the application of a single set of attribute bands to all three lake systems will potentially lead to greatly differing costs in meeting a single bottom line applicable to all of these lake ecosystems.

There are a number of water bodies in the Hawkes Bay that may fit within the scope of an intermittently opening and closing lake and lagoon. They include Whakaki Lake, Te Paeroa Lagoon, Wairau Lagoon and Ohuia Lagoon. Clarity about the scope of ICOLL and its applicability to these coastal lakes and therefore potential costs to the Hawkes Bay community is still necessary.

Submissions

A definition for ICOLL is required.

The Council supports the development of attribute bands for ICOLLs, however, it seeks that further analysis on the appropriateness of using the same bottom lines for shallow and coastal lakes as are used for lakes generally.

3a Transitional objectives (Policy CA4 and appendix 4 of the NPS)

Further guidance is being proposed in relation to Policy CA4 that allows transitional objectives below the bottom line.

Question 6. What information should be required in a request to list a water body in Appendix 4 of the National Policy Statement?

Comment

While the discussion document seem to focus on managing ICOLLs that currently don't meet bottom lines, this part of the NPS applies to any water body, not just ICOLLs.

At present there are no Hawkes Bay Rivers for which council will seek objectives below the bottom lines. Council considers options for setting targets and timeframes for meeting desired objectives provides sufficient flexibility to manage its waterbodies to give effect to the NPS.

However, the impacts of any further NOF attributes still to come are not yet known and there is some uncertainty about the state of at least one of the Hawkes Bay coastal lakes (see section 3 above).

The Council observes that provisions for exemptions must be carefully managed in light of risk of unravelling overall intent of freshwater reforms.

4. Stock Exclusion

The proposal is to create a national regulation to require exclusion of dairy cattle on the milking platform by 2017 and other stock types at later (specified) dates.

Question 7. Do you agree with the proposed requirements and deadlines for excluding livestock from water bodies? Why or why not?

Comment

This proposal appears to be consistent with the Resource Legislation Amendment Bill which already proposes to introduce new regulation making power to control stock access to water.

A regulation such as that proposed is likely to be both certain and clear and, with the infringement proposals included in the amendment legislation, can also be more easily and rapidly enforced.

While there is general agreement among scientists and land managers that stock entering water bodies has an adverse effect on water quality and ecosystem health, the level of impact depends on a range of local characteristics including stock type, farming system, intensity of stocking, land form etc.

Such a regulation is also inherently inflexible. A national regulation dictating stock exclusion will not be able to account for local or site specific issues, including costs of fencing in any given situation and assessment of the likely benefits.

The way in which slope is to be measured will also require further specification.

The Council's recent Tukituki Plan Change ('Change 6') takes a risk-based approach to stock exclusion and fencing. It recognises, like the discussion document does, the difference that sloping land and farming system, stock types, stocking rates and location in relation to priority catchments and water body values potentially makes on adverse effects and considers costs of exclusion in relation to expected water quality benefits.

Change 6, while establishing stock exclusion as a minimum performance standard, nevertheless provides a consent option that allows a site specific assessment of the effects of stock access to water, and the costs and benefits of stock exclusion.

This flexibility and regard to scale and intensity of effects at a property scale is not enabled by a regulation as proposed.

The HBRC is also concerned about the potential impact of permanent stock exclusion in areas serviced by community drainage schemes, and the impact this has on the efficiency and effectiveness of existing schemes. HBRC is actively assessing alternatives to the long-standing practice of cattle grazing the margins of rivers and streams within flood control schemes. It seeks flexibility to account for water quality effects and to consider other options on this land within any possible national regulations.

The proposal mentions adverse effects arising from direct stock access, but also notes riparian areas filter effects of adjacent land use, and provide habitats and recreation. However, management of riparian land to achieve any of the other potential positive outcomes listed is not likely to be an outcome of stock exclusion requirements unless the regulation specifies a wider range of requirements about the management of the land adjacent to the water body, including setback distances and planting/vegetation requirements. The discussion document acknowledges that the costs of this riparian land investment are not always justified by the environmental benefits. This view is supported by the Council and it agrees that national regulation in respect of riparian land is not warranted.

Submissions

The Council has concerns about the lack of flexibility inherent in a national regulation but would support further direction through an NES. For example it would support:

- 1. references to "exclusion" as opposed to "fencing" requirements;**
- 2. proposals for some exemptions and regional flexibility**
- 3. enabling temporary fencing in some circumstances and "short-term grazing" but with greater clarity and specificity**

The Council also supports clear national direction that all cattle, deer and pigs be excluded from:

- estuaries, natural wetlands and lakes.**
- rivers, identified in regional plans as having significant habitat value for freshwater fish, aquatic plants and birds**
- rivers, and their tributaries where relevant, identified in regional plans as having swimming value.**

Any other stock access controls should reflect the complexity inherent in managing a range of stock types and degrees of contamination and other adverse effects as well as understanding the costs involved for the various farming systems, including within flood control and drainage scheme areas, and other management options that provide cost effective solutions.

In developing an NES, the Council suggests that a risk based approach could be adopted that accounts for things like stocking density with timing for stock exclusion also governed by the significance of values of the affected water bodies and as identified in regional plans

Should national regulations be pursued as suggested in the discussion document and as proposed in the Resource Law Amendment Bill, Council seeks that any regulations be drafted to allow for innovative solutions to stock exclusion and avoiding adverse effects on ecosystems and water quality.

The Council also seeks that clarity is provided about how the slope thresholds would be assessed and imposed. It notes that slope can vary at the local, property and paddock scales.

5. Technical efficiency and good management

Development of technical efficiency standards (defining the amount of water used by efficient users) is proposed.

Question 8. Should standards for efficient water use be developed? When should they be applied to consents (e.g. on consent expiry and/or on limit setting and/or permanent transfer)?

Comment

The proposal anticipates that reduction in inefficient water use will free up allocatable water for new users and address over-allocation.

The extent to which this occurs is likely to vary according to historic water allocation policy and the patterns of water use for individual water permit holders. This means variable costs and opportunities for permit holders.

However, there is value in standardising allocation approaches and providing for national consistency. Technical efficiency can be defined and described with reasonable clarity and certainty.

Some industries, particularly the irrigation industry, and dairy industry in relation to farm stock water supply and dairy shed wash down are developing good understanding of acceptable and achievable levels of efficiency for reticulation and application technology.

Any water use efficiency standards should be developed in such a way as to allow for continued improvements and technical innovation. *It should be left to council planning processes to determine the most cost efficient and effective way of requiring uptake of improved application technology and allow local communities to determine timeframes that can account for the water allocation and management history.*

The Council agrees that urban water supply and storm water management will also be assisted by development of good practice and technical efficiency standards.

This is relevant for water supply in urban areas as well as management of storm water discharges in existing and new developments. This is particularly so where there may be increased costs of development to ensure efficient water supply and storm water management standards must be met. The council considers that regulations in these circumstances better enables territorial and regional councils to require good practice and recover costs from developers more effectively and consistently.

The costs and benefits of improved standards for urban development must be a national consideration and assessed within the context of other national measures proposed to increase the residential and business development capacity (including related proposals in the current Resource Legislation Amendment Bill 2015).

New water use activities can be required to adopt the required efficiency standards upon any application for consent for a new activity.

However, for existing investment, upgrading systems to meet new efficiency standards can be prohibitively costly and would need to be managed on a case by case basis.

Submission

The Council supports and encourages the development of technical water use efficiency standards, as regulations or NESs.

The Council also supports development of technical efficiency standards for urban water and waste water reticulation and low impact stormwater (aka 'water-sensitive') design for new urban development.

The Council supports implementation of technical efficiency standards for new development, but any requirements for upgrading existing systems must be through local plans and in consultation with local communities.

7a. Good Management Practices

Question 8. Should standards for good management practices for diffuse nitrogen discharges be developed? Who should be involved in their development? When should they be applied to consents (e.g. on consent expiry and/or on limit setting and/or permanent transfer)?

Comment

The development of better understanding and certainty about what good agricultural practice means is strongly supported by the HBRC.

The Council considers that work commenced by ECAN and the primary industries agreeing on and commencing to define good practice (see [Industry-agreed Good Management Practices Relating to Water Quality Sept 2015](#)) is a fundamental first step in this process and should be further developed to support this proposal.

The council also considers that implementation of good practice across all farm systems is an achievable objective, provided a national approach is adopted and is one that includes both regional councils and primary industry in its development and implementation. Current NPSFM implementation work by councils is resulting in the development of a whole new industry at a regional scale as councils look for

local resources to provide farm extension services and farm plans, set up accreditation systems and farm plan templates and providing for auditing and monitoring.

In addition, key industries have already developed or are developing farm by farm extension, advisory and market based audited good practice initiatives. Horticulture NZ GAP programmes and the Sustainable Dairying; Water Accord programme both offer opportunities that could be further developed to complement councils and national requirements for good agricultural performance in a cost effective way.

While there will be some (over-allocated) catchments where special measures (better practice) will apply and be managed through the limit setting plan process, a significant part of NZ's water quality problems will be improved by landowners adopting 'good practice'.

In considering options for developing and requiring good management practices, the Council encourages the government to work with primary industries to develop a national approach to a programme that;

- provides the extension to farmers so they know what GMP means for their farm
- develops an appropriate FEP or FP or LEP based on national/industry templates (and able to be modified for each region's climates/soils etc as necessary)
- provides monitoring of farm practice (and which can be based on existing industry systems where they can be aligned or established to provide the same outcomes)
- includes auditing.

Such an approach will allow appropriate, least cost and potentially innovative mechanisms to be developed and needs better co-ordination at national level between councils, industries and MfE/MPI.

This council considers that focus on a regulatory approach dependent on resource consents for routine farm activities is a potentially costly and ineffective response to the challenge of ensuring good practice (and that better systems can be developed to address a whole range of farm activities including animal welfare, health and safety and waste management).

Submission

That the government and primary industry in consultation with the regional councils develop a least cost and effective national solution to resolve issues surrounding definition, extension and application of good farm practice rather than a council by council approach through regional plans.

6. Transferring consents

The proposal is for investigating a package of measures such as standardising consent specifications, making information available about water use and contaminant discharges, model plan provisions, enabling water user groups.

Question 9. Do you support easier transfer of consents? Do you think the changes outlined in Proposal 2.4 would better enable transfers? What other changes would better enable transfers?

Comments

The Council agrees that water allocation and consent management systems and approaches must be flexible, responsive and timely so as to enable the market to respond quickly and efficiently to water use demand – routinely and as a result of decreased supply during droughts.

A variety of mechanisms are being developed by councils generally, and this council in particular, with their water user communities and consent holders to meet the challenges of efficient use of the allocatable water, including management of available water during a drought.

For example, this council has worked closely with the Twyford irrigators to enable a joint management of all consents within the management area. Flow management regimes that allow for staged reductions to be managed by consent holders collectively is also being considered through a collaborative planning process.

The Council does not support the proposition that separating take and use consents necessarily leads to better site to site water transfer but considers that efficient and flexible water permit administration, including more explicit provision for temporary transfers and real time management of water permits and water meter monitoring is required.

Making information about water permits and discharge consents publicly available would assist in demonstrating that permit holders have responsibilities as well as privileges to use public water. Further development of the LAWA website will assist in providing appropriate detail about water use and contaminant discharges.

The range of existing and potentially new and innovative ways of managing allocatable water and ensuring available water is used efficiently means that this allocation challenge is best addressed through production of good guidance material.

Development of better information management tools to manage real time site to site movement of water will also be of assistance. This includes a more flexible approach to temporary or seasonal transfers and amendment to RMA Section 136 to enable more timely and flexible consent management.

Submission

Guidance about the range of existing and potentially new and innovative ways of managing efficient use of allocatable water is supported by this council.

Development of better administrative tools and information management systems, including web based systems, to manage permit transfers quickly and efficiently are supported by the council.

Legislative amendments to allow a more timely and flexible approach to temporary and seasonal transfers including through the use of real time web-based transfers would be supported.

7. Managing over-allocation

The proposal is for more guidance, but there is an option for more rules if necessary.

Question 10. How should the Government help councils and communities address over-allocation for water quality and water quantity? Should it provide guidance, rules or something else (please specify)?

Comment

The Council considers that over-allocation can be addressed in a variety of ways and innovation and community based solutions should not be constrained by regulations. Development of further guidance about options, tools and approaches would however, be welcomed.

8. Funding for freshwater management

The proposal is to increase council's ability to recover costs for water monitoring, enforcement, research and management.

Question 11. Should councils have greater flexibility in how they meet the costs of improving freshwater management? For example by recovering costs from water users and those who discharge to water? Please provide examples.

Comment

The costs involved in water resource investigations and monitoring are substantial and generally driven by abstractive demand as limits are increasingly refined.

For example, new groundwater and surface water modelling for the Heretaunga Plains is required to enable even more sophisticated flow and water quality management and establishment of resource limits.

The pressure for this work is driven by the cumulative effect of resource users and the need to ensure robust and defensible limits are set that both enable maximum primary production as well as protect the other values of the water bodies.

HBRC policy is to recover 35% of the total costs of investigation and monitoring of freshwater resources from holders of resource consents to take or dam water, or to discharge into water or onto land that may enter water. This recognises that while all residents of the region receive benefits from the sustainable management of our freshwater resources, resource users receive greater benefits than other land owners.

Costs are recovered from consent holders using a zone based approach. Twenty per cent of the costs will be charged as a fixed portion and distributed uniformly among all current consent holders. The remaining 80% of the costs are separately attributed to the five major categories of relevant consent holders (surface water takes, groundwater takes, (stream depleting – hybrid SW/GW), hydro water takes, discharges to water, or discharges to land). Charges are weighted against individual allocated volume m3 for water takes, and a pollution index score for discharge consents.

The Council also applies both fixed and specific charges to recover costs associated with monitoring resource consents.

However, the Council observes that there is little opportunity for councils to impose costs to mitigate adverse cumulative effects associated with authorised activities – particularly historical effects. It notes that financial contributions provide one opportunity for imposing costs on consent holders, but this is a somewhat constrained mechanism not often used in practice.

The Council would also strongly support provision of cost recovery for monitoring permitted activities. Use of permitted activities for small scale, straightforward and routine activities reduces consent costs for resource users and would enable Council to adopt a more stream-lined approach to resource management. For example, activities such as land disposal of some contaminants could be enabled and encouraged by adopting permitted activity status, if they were able to be monitored and costs recovered through a set permitted activity fee.

Submission

Enable monitoring charges to be established for permitted activities.

Consider opportunities for councils to impose fees or charges on resource consent holders to assist in the mitigation of historic contamination or resource degradation related to the cumulative effect of that resource use. The fees would necessarily be linked to specific mitigation measures or projects within the applicable catchment.

9. Te Mana o te Wai

The proposal is for inclusion of a purpose statement in the NPS to provide context and meaning of Te Mana o te Wai and reflect Te Mana o te Wai in regional policies and plans.

Question 12. How can the Government help councils and communities to better interpret and apply Te Mana o te Wai in their region?

Comment

The Council considers the concept of Te Mana o te Wai complements the NPS and the RMA and their provisions including safeguarding life-supporting capacity and health of the people and communities, maintaining and improving water quality, identifying values for which the water is to be managed and ensuring integrated management. They are complementary and aligned provisions and the council supports measures that seek to integrate iwi and community values and seek commonality and alignment between them.

However, the Council is concerned about use of the term “give effect to” as this requirement has significant importance and effect as confirmed by case law. The Council is cautious about legal implications and interpretations in practice of new proposals such as a ‘purpose statement’ in the NPS, unless it is clearly caveated as the Preamble is by the specific text “may assist in interpretation of the NPS.”

Submissions

The Council supports the “giving effect to” Te Mana o te Wai as an overarching objective for freshwater management but seeks that any inclusion of Te Mana o te Wai is coupled with an explanation of what it means.

10. Iwi and hapū relationships

The proposal requires councils to engage with iwi and hapū at the outset of planning processes and to document all iwi and hapū relationships.

The council must also engage with iwi and hapū in identifying values and setting objectives.

Question 13. Should councils be required to identify and record iwi/hapū relationships with freshwater bodies, and how should they do it?

Question 14. What would support councils and iwi/hapū to engage about their values for freshwater bodies?

Question 15. What are your views on the proposal for a new rohe-based agreement between iwi and councils for natural resource management? What type of support would be helpful for councils and iwi to implement these to enable better iwi/hapū engagement in natural resource planning and decision-making?

Comment

The references in various pieces of legislation and policy statements to concepts, directions and processes including: engagement, collaboration, participation, involvement, iwi participation arrangements, rohe based agreements, and treaty settlement arrangements are becoming increasingly complex and confusing.

The multiple references and mechanisms to iwi may have the perverse outcome of diluting effective iwi contributions. The Council considers it is necessary to distinguish between activities such as proper identification of iwi values and the decision making processes involved in appropriately providing for them.

Submission

Council supports the provision of mechanisms and processes to ensure and enable appropriate iwi participation to identify their relationships with water bodies in the region.

11. Water Conservation Orders (WCOs)

The proposals are:

- an amendment to the RMA to require WCO applicants to provide evidence of consultation with iwi, and have an iwi person on the special tribunal and require the tribunal to consider the needs of iwi
- require applications to consider any planning process underway
- allow the minister to delay an application if there is a conflict with a regional planning process
- allow councils to recommend a WCO over a water body identified as outstanding in a regional plan and streamlined Ministerial processing.

Question 16. What are your views of the proposed amendments to water conservation orders? Outline any issues you see with the process and protection afforded by water conservation orders.

Comment

Amendments to the RMA in relation to WCOs and iwi involvement will enable the government to address Treaty principles.

Amendments to require a WCO applicant to consider planning processes does little to change outcomes or clarify expectations. The challenge will be in assessing the appropriateness or need for a WCO process in relation to any other planning process and taking necessary action to resolve any issues. An applicant in such a situation is likely not best placed to make the required decision or assessment. In any case, “consideration” of planning processes does not either identify the necessary action or require it to be undertaken.

The NPS, regional planning process and WCO processes all require a similar analysis and similar decisions to be made. Namely, they require an understanding of the values of a water body and their level of significance, and the measures required to provide for those values.

The NPSFM and the WCO both refer to ‘outstanding values’ as the highest level of significance. Different process and different regulatory tools or mechanisms are used to provide for those values –i.e. a schedule 1 process and a regional plan compared to a Special Tribunal and a conservation order.

The NPSFM should be able to recognise and provide for national values but the planning structure and processes required currently do not enable or allow for this level of significance assessment and subsequent protection.

The WCO is the only way a higher level of recognition can be given to the iconic or nationally important water bodies. In giving effect to the NPS, a council currently can only recognise and provide for outstanding values in regional policy statements and regional plans. A WCO on the other hand recognises and protects at a national level, and has a more enduring effect (i.e. plans are reviewable every ten years whereas WCOs are not).

It is not yet clear whether an RPS or regional plan must (or is able to) only identify, and provide for ‘outstanding’ at a regional scale. While a regional plan could acknowledge values that are outstanding in a national context, it cannot protect nationally important values in the same way as a national mechanism (i.e a WCO.) Without aligning the WCO and the NPS use of the term “outstanding”, a lack of clarity and on-going tension between the two mechanisms will remain.

It would be helpful in the meantime, if both the RMA and the NPS enabled the WCO and the regional planning processes to be aligned and integrated. This is particularly in respect of the investigation and debate involved in establishing the identification and significance of the values being managed, and the consideration of measures required to provide for them. It particularly requires establishing criteria that enable levels of significance to be assessed.

Where ‘outstanding values’ are found to meet a WCO significance test, the measures to recognise and provide for them are provided through the WCO and confirmed through the Special Tribunal process. The remaining water bodies, and any measures that restrict power of council as they relate to the water required by the WCO are managed through a regional plan schedule 1 or other process anticipated by the Resource Legislation Amendment Bill.

The Council also supports a proposal that enables a council to recommend to the Minister that a WCO be created over an outstanding water body and supports a fast track WCO process for these types of applications. A regional council including through any collaborative process can also find that water body values are outstanding and qualify for national recognition.

The Council also suggests that further guidance or criteria are required to guide the Minister's discretion to accept or decline an application. The council notes that the RMA does not require the application to be accepted if complete.

An application is made and the minister can require further information under section 201(3). The minister can subsequently accept or reject the application (section 202) and if the decision is to reject the application, reasons must be provided.

The Council considers that rejection cannot solely be based on completeness as this can be addressed under 201(3) and there is clearly scope for other reasons given the wording of section 202(1)(b).

Submissions

The Council supports recognition for iwi within WCO processes (as an interim provision.)

There is a need for clarification between the NPS and WCO use of the term 'outstanding' in relation to how such values are determined, how regional and national significance is addressed and provided for, including by a national WCO mechanism rather than a regional plan.

This requires the development of nationally consistent assessment criteria to assist in determination of significance levels, and in particular, the criteria for 'outstanding' at both national and regional scales to be established with some urgency.

The Council considers it would be helpful if decision making criteria were to be developed to assist the Minister in determining the reasons why an application for a WCO would be rejected under 202(1)(b).

The council recommends that a time limit be placed on the processing of WCO applications once an application has been accepted.

In the longer term the council would prefer the requirements, process, provisions and regulatory mechanisms of the National Policy Statement are amended to enable councils and communities to recognise and appropriately provide for iconic or nationally significant (outstanding) water bodies and for this to replace the WCO provisions.

12. Implementation and support for iwi

13. Papakāinga and marae water supply

The proposal is for the government to facilitate and resource programmes to support councils and iwi to engage together effectively in water planning.

17. If you are involved with a marae or live in a papakāinga does it have access to clean safe drinking water? What would improve access to clean safe drinking water for your marae or papakāinga?

The government also proposes to provide funding to develop or improve water infrastructure at marae and papakāinga.

Comment

The Council supports moves that assist in more effective engagement with iwi in water planning.

The council also supports provision of water infrastructure (water and wastewater) for communities at risk of adverse human health effect because of reduced access to water or wastewater contamination. The Council considers that criteria for funding such initiatives should be general and not limited to marae and papakāinga.

The Council recently worked with Hastings District Council to resolve a water supply and waste water issue for residents of the Bridge Pa area near Hastings. A combination of lowered groundwater tables and older deteriorating bores meant water supplies were not as secure as they had traditionally been. New reticulation for all residents in that area, including two marae was provided to manage health risks and water supply issues for that community.

Submission

That funding criteria be developed and associated funding made available for water supply and wastewater disposal infrastructure to meet the needs of rural communities including marae and papakāinga.

14. Funding for Freshwater Improvement

In 2014, the Government announced that it would allocate \$100 million over 10 years to buy and to create an environmental buffer that helps improve water quality.

The Government has funding for retire selected areas of farmland next to important waterways and proposes to broaden the focus to supporting projects that will help water users move to managing within environmental limits including funding part of irrigation schemes to contribute significant environmental benefits.

Question 18. Do you agree with the proposed criteria for the Freshwater Improvement Fund?
Why or why not?

Comment

Government funding to enable water augmentation schemes to take advantage of the economy of scale and contribute to environmental benefits and community resilience in addition to the market drivers for secure irrigation (or other commercial end use) water is supported and encouraged by the Council.

For example, the Council is exploring options for novel ways of using treatment wetlands and engineering options to help clean up freshwater lakes and ICOLLS that are currently in very poor condition. It would strongly support that co-funding be made available through this Funding for Freshwater Improvement initiative, because the cost for these mitigation projects can be prohibitive if they are reliant on local funding alone. And it is difficult to envisage meeting bottom lines for our shallow lakes and ICOLLS via land use change and land management alone.

Submission

The Council supports the provision of funding to assist in improving quality and availability of freshwater and supports the proposed criteria.

15. Swimming Value

The Council considers that the NPS should explicitly recognise that swimming is a national value. The value should be clearly expressed as 'swimming and other contact recreation' rather than "human health for recreation".

The text in Appendix 1 could be reworded to better express acknowledgement of the recreation values of water including swimming as national compulsory value that must be provided for in regional plans.

The bottom line may still be appropriately expressed in relation to secondary contact, but the onus or requirement for councils to identify and provide for waters that are used for swimming must be more explicit.

Submission

The Council seeks that the NPS specifies more clearly that swimming is a national value and that it amend the text in Appendix 1 of the NPSFM to more clearly acknowledge the national value of water based recreation – and to specifically include swimming as a national value of freshwater.

The text must more clearly direct that identification of rivers valued for swimming and provision for them based on the attributes specified for recreational in Appendix 2 is required as well as requiring bottom lines for all freshwater based recreation.