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Clean Water Consultation 2017
Ministry for the Environment
PO Box 10362
Wellington 6143

Email: watersubmissions@submissionsmfe.govt.nz

SUBMISSION FOR WATER NEW ZEALAND ON THE CLEAN WATER
CONSULTATION
– THIS INCLUDES THE PROPOSED AMENDMENTS TO THE NATIONAL POLICY
STATEMENT FOR FRESHWATER MANAGEMENT

Introduction and overview

1. Water New Zealand appreciates the opportunity to provide feedback on the government's Proposed Amendments to the National Policy Statement for Freshwater Management ("NPS-FM") and the stock exclusion proposal.
2. Water New Zealand is a not-for-profit organisation that promotes and represents water professionals and organisations. It is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and technical support. Members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies and scientists. It has various special interest groups, such as the Stormwater Group, that provide a place for members to work together on common issues. The Stormwater Group, for example, has been active in developing this submission.
3. Water New Zealand is a member of the Land and Water Forum (LAWF) Small Group and supports the matters contained in the LAWF submission.
4. Water New Zealand supports, in principle, the overall intent of the Clean Water proposals, which cover the swimmability targets, proposed amendments to the NPS-FM, the freshwater improvement fund and the stock exclusion proposal. Water New Zealand does, however, want to see some specific clarifications made to the swimmability targets and the proposed changes to the NPS-FM.

Primary contact ('swimmability')

5. Water New Zealand supports the intent behind the government's targets and dates for swimmability in large rivers and lakes. Water New Zealand also supports the concept of a time-based approach to managing waterbodies for their suitability for primary contact activities¹. There are, however, several aspects of the proposals that need clarification.

¹ Primary contact refers to activities that involve full immersion in water; such as swimming, kayaking and cultural practices (for example).

Process to identify 'swimmability' targets

6. The government's overarching goal involves the Minister for the Environment (MfE) requiring regional councils to identify specific targets for improving the swimmability of their waterways and the mitigations they'll use to get there. The proposed process seems arbitrary and does not provide sufficient opportunity for public participation. This is particularly problematic for territorial authorities managing infrastructure that could be affected by the targets. The process will need to involve consideration of impacts and trade-offs, which requires a conversation that needs to be wider than between central government and regional councils. Water New Zealand wants to see the process to identify the targets amended to provide for adequate public consultation. Existing collaborative groups, such as the Canterbury zone committees, could have a role as they bring together different stakeholder interests to explore what may be feasible and desirable for their own communities.
7. Many places that are important to communities for carrying out primary contact activities may not be captured by the improvement requirements and targets. The use of fourth order rivers and above is too coarse a definition – it misses out many locations that people often use for primary contact activities (e.g. some smaller rivers and streams that flow directly into the sea). For the improvement targets to be meaningful to the communities, the process should allow regional councils to identify, together with their communities, current, historical or potential sites that the community values for primary contact. This should not be limited to only fourth order rivers and above.

Appendix 2 attribute tables

8. The proposed new Appendix 2 *E.coli* attribute table outlined in the Clean Water consultation document is misleading and inaccurate – it includes only one of the four tests of water quality outlined on the MfE website² and the narrative attribute state column does not accurately reflect the risk of campylobacter infection for the *E.coli* levels of each attribute state outlined in the tables on the website.
9. Water New Zealand considers that the final *E.coli* attribute table included in Appendix 2 of the NPS-FM integrate the information in Tables 1 and 2 on the MfE website. There needs to be clarity around what happens if one or two of the metrics don't align with the same attribute state.
10. The proposed new Appendix 2 *E.coli* attribute for primary contact has no bottom line. There is also no separate secondary contact attribute. As a result any waterbodies that currently do not meet secondary contact standards will only be required to 'maintain' that water quality rather than improve to above the previous national bottom line. Water New Zealand wants to see the existing secondary contact attribute retained.

Monitoring requirements

11. The proposed changes to Policy CB and the proposed new Appendix 5 contain two very different monitoring requirements:
 - (a) monitoring for meeting *E.coli* objectives (i.e. long-term grading); and

² <http://www.mfe.govt.nz/fresh-water/freshwater-management-reforms/water-quality-swimming-categories-attribute-states-detail>

- (b) surveillance and monitoring for informing the public on the suitability for immersion at various times and places.
12. The monitoring requirements related to (b) above are important for managing public risk around primary contact under the new time-based approach. The content of Appendix 5 has been taken from the 2003 microbiological water quality guidelines for marine and freshwater recreational areas³. However, policy CB, to which it is linked, relates to monitoring for the meeting of freshwater objectives and values. This is confusing and the two requirements need to be more clearly separated.
 13. Water New Zealand strongly supports updating the 2003 microbiological guidelines as a matter of urgency. Review of these guidelines is necessary for the time-based approach to be implemented consistently and in a way that supports appropriate management of public risk around primary contact.
 14. The monitoring requirements in Appendix 5 also need to be updated to better reflect the more efficient and advanced monitoring and notification practices that some councils use. The microbiological guidelines include a risk based assessment as part of the Suitability for Recreation Grade and this concept should be further developed.

Macroinvertebrate monitoring requirement

15. Water New Zealand supports the new macroinvertebrate monitoring requirement because macroinvertebrates are an important indicator of the health of freshwater ecosystem health. However, the new requirement could go further. There is a general requirement “to develop (for example) an action plan” if monitoring suggests freshwater objectives are not being met, but these requirements lack a specificity linked back to macroinvertebrate monitoring.
16. Water New Zealand supports the LAWF recommendations on this matter. Specifically that:
 - The requirement needs to specify the use of the macroinvertebrate community index (MCI) as it is a well-established and commonly used macroinvertebrate measure that is monitored by most regional councils.
 - There needs to be a specific requirement to take action to remedy a downward MCI trend or a score that is below 80 (unless the low score is for natural reasons).
17. Developing an action plan will require a good understanding of the drivers for MCI scores, which are complex, and what the appropriate management responses should be. Water New Zealand wants to see MfE develop good technical material covering various drivers and management responses to support implementation of the requirement. This material needs to be developed and delivered alongside the rollout of the NPS-FM changes, rather than follow too long afterwards as has been the case in the past (for example, the FMU guidance came out after most councils had already defined FMUs).
18. Finally, there are two variants on MCI; the hard-bottom MCI and the soft-bottom MCI. The new requirement should apply to both of these stream types although it is important that where a soft-bottomed stream is not naturally soft-bottomed, the hard-bottom MCI variant should be used. The NPS-FM and the supporting technical material need to address this.

³ <http://www.mfe.govt.nz/publications/fresh-water/microbiological-water-quality-guidelines-marine-and-freshwater-0>

Te Mana o te Wai

19. The proposed additional Objective and Policy in relation to Te Mana o te Wai (TMOTW) is supported in principle. The interconnectedness of water and the broader environment which includes the health of people is of fundamental importance when we are considering the provision of safe drinking water and the management of point source discharges particularly from wastewater treatment plants. These interrelationships are not always well understood and recognised well in regional and local policy. A number of recent high profile events relating to water underline this challenge. Including a framework for TMOTW in the NPS-FM is therefore welcome but it needs more work.
20. It is unclear how councils and communities are expected to interpret the relationship between the new Objective and Policy and the values expressed in Appendix 1. The changes imply there is intended to be a values hierarchy under which water supply, along with other important values listed under the heading “extractive uses”, would be outside the TMOTW framework, and therefore given lower priority in freshwater objective and limit-setting. This is inconsistent with the more integrated and holistic approach to assessing community values that has been promoted by LAWF, and supported by Water New Zealand.
21. Water New Zealand would like to see water supply explicitly connected to the TMOTW framework under the heading “Hauora o te Tangata” (health of the people). Water New Zealand would also like the text of the new Objective and Policy to be clarified to support consistent implementation. The relationship to, and treatment of, the national values listed in Appendix 1 need to be explicit in the wording of the Objective and Policy itself.

Objective A2 (maintain or improve)

22. Amendments to Objective A2 are intended to address uncertainty about the requirement to ‘maintain or improve’ overall water quality, to reduce reliance on the Environment Court to interpret policy intent. Water New Zealand supports the intent of the changes but notes that the changes do not go far enough.

Application of ‘maintain and approve’ to values

23. Water New Zealand notes that there is a problem with trying to apply ‘maintain or improve’ to all values, because values are often in conflict. In practice, requiring conflicting values to be maintained may be impossible for some communities. The usual approach in these cases is how to deliver on the compulsory values in the NPS-FM and the communities’ top priority values at least cost over time.
24. Water New Zealand would like to see Objective A2 clarified so that in the first instance ‘maintain or improve’ should apply to the compulsory values, rather than all values as government intends. Water New Zealand recognises that the two compulsory values do not comprise all elements of TMOTW and that there may need to be better recognition of TMOTW in terms of how the ‘maintain or improve’ requirement should apply in practice.

Management of ‘unders and overs’

25. In addition, the amendments have not fully addressed the question about whether an ‘unders and overs’ approach (whereby a deterioration is tolerated provided there is an

equivalent improvement elsewhere) is consistent or not with the NPS-FM or indeed the Resource Management Act (RMA). The Environment Court judgement in *Ngati Kahungunu Iwi Inc. v Hawke's Bay Regional Council* [2015] NZEnvC 50 noted that an 'unders' and 'overs' approach to the interpretation of 'overall quality' was 'fundamentally flawed' due to the difficulties in practically implementing it. These comments did not form part of the substantive reasoning for the judgement and so do not necessarily set a legal precedent. That said, the comments are significant and warrant further consideration. There are some who consider that taking an 'unders and overs' approach is inconsistent with s30 of the RMA which concerns the functions of regional councils. These differences in views will likely lead to further litigation. Water New Zealand would rather see this clarified by MfE.

26. Councils are facing considerable uncertainty in how to implement the NPS-FM in light of this decision. An 'unders and overs' approach is a management necessity at a certain scale as it is not always possible to have every attribute 'maintaining or improving' at every site, everywhere, all of the time. There does however, need to be a robust process for managing 'unders and overs' in a fair and equitable way. It is important that one community is not trading off the water quality values of another.
27. Water New Zealand supports the proposal to limit the 'maintain or improve' requirement to within Freshwater Management Units (FMUs) as opposed to within a region. This is a useful step in clarifying the scale at which 'unders and overs' are and are not appropriate. Allowing flexibility within FMUs makes sense because it is at this scale that objectives are set. That said, FMUs are being defined in a variety of ways and in some cases there is likely to be too much flexibility in how objectives can be set. It is possible that there may be water quality deterioration in places which there should not be.
28. Water New Zealand wants to see the government state its position on whether and at what scale 'unders and overs' is appropriate (or not) to reduce the legal uncertainty currently faced by councils and communities.
29. Water New Zealand also wants to see MfE take a more active role in engaging with councils to ensure FMUs are set at a scale appropriate for implementing the 'maintain or improve' requirement. MfE has put out FMU guidance, however, it is not mandatory. There needs to be adequate community involvement in how FMUs are defined as well as how any 'unders and overs' should be managed.
30. Water New Zealand also suggests that MfE develop technical material to support implementation of this requirement that covers:
 - How to manage 'unders and overs' for a single attribute. It would be helpful for the government to state that 'unders and overs' for a single attribute should be deemed acceptable at a sub-FMU scale provided it is a zero sum game at the FMU. In other words, at the point at which objectives are set and monitored.
 - How to assess 'unders and overs' across attributes within values (i.e. ecosystem health) more objectively. Water New Zealand recognises that work is required to develop a method for doing this; however, the work would be of considerable value to councils and communities as they implement the NPS-FM. Coordination of key experts at a national level would be the preferred way to deliver on this efficiently, rather than leave it to individual councils.

Policy CA3b and Appendix 3 (exceptions)

31. The additions to this policy are intended to clarify and narrow the circumstances in which a regional council can seek an exception so that freshwater objectives can be set below bottom lines. The changes mean that exceptions can be requested if the exceptions are reasonably necessary to realise the ‘benefits provided by the listed infrastructure’. This is defined as:

“...the positive effects of infrastructure on the well-being of the community and can include, but are not limited to, renewable electricity generation, employment and economic well-being”.

32. This is an extremely open-ended definition that could apply to any infrastructure provisions that could impact on water quality and water quantity. The definition does not provide clarity on the scale of infrastructure – does it have to be locally, regionally or nationally significant, for example? While this policy could apply to water supply, wastewater and storm water infrastructure there is an inherent tension created in allowing such infrastructure to trigger a less than bottom line requirement. Exceptions should be minimised wherever possible.
33. Water New Zealand is concerned about the ongoing uncertainty facing infrastructure providers from having Appendix 3 remain unpopulated for so long. Water New Zealand also considers that any exceptions should be genuinely exceptional. The government noted in its 2016 Next Steps for Freshwater consultation document that government needs a range of information to determine where exceptions should be considered and much of that information is being collected by councils as part of freshwater objective setting under the NPS-FM. Water New Zealand considers that this is not a good enough reason to leave Appendix 3 unpopulated for so long.
34. Water New Zealand suggests that the government work more actively with councils as they implement the NPS-FM to identify whether there are FMUs containing significant infrastructure that may need relief from national bottom line requirements and how that is best achieved. Exceptions could be kept to a minimum by developing specific attributes that are suitable for these FMUs. This type of spatial classification framework has been recommended by LAWF.

Future work programme

35. Meeting community aspirations for freshwater in the most economically sustainable way will require new management approaches. Water New Zealand wants to see (for example) national direction on water metering extended, greater use made of economic instruments to encourage more efficient water use (such as charging), more attention given to urban good management practices (not just water sensitive urban design), as well as support for standardising consent conditions to help streamline implementation. These are just a few examples of matters potentially being covered in the governments future work programme for 2017 onwards (freshwater allocation and good management practices).
36. Water New Zealand is keen to see the planned work completed in time to support 'first generation plans' and in turn support more effective infrastructure planning. "Three waters" infrastructure will likely face increased environmental standards once the NPS-FM is implemented and this will cost communities. The scale and cost of this challenge could be mitigated considerably if adequate attention is given to the future work programme.
37. It is also vital that future work on allocation and good management practices involve stakeholders in an open and transparent way from an early stage and on an ongoing basis. The confusion and controversy surrounding the Clean Water discussion document and proposed changes to the NPS-FM could have been minimised through greater transparency of process, rigour and openness in the how government interacted with key groups it takes advice from before the proposals were announced⁴. It is important that reflections on how Clean Water was rolled out are factored into the approach for the future work programme.

Conclusion

38. Water New Zealand thanks the Ministry for the opportunity to make comments on these amendments and is happy to elaborate if required.



John Pfahlert
Chief Executive

⁴ This includes (for example) the various forums where MfE interacts with local government, LAWF, the National Objectives Framework Reference Group and MfE's Science Review Panel.