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Tēnā koutou katoa

Fast-track consenting legislation and changes to application of the hierarchy of obligations to consenting under the National Policy Statement for Freshwater Management feedback.

Water New Zealand (Water NZ) welcomes the opportunity to help inform the Government's policy to develop fast-track consenting (FTC) legislation and to changes to how the hierarchy of obligations contained in Te Mana o te Wai is applied to consent applications and consent decisions under the National Policy Statement for Freshwater Management (NPS-FM).

Water NZ is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand's three waters (drinking water, wastewater and stormwater). Water NZ is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Its ~3,200 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists.

Noting our members' interests, our feedback focuses on water environment and infrastructure to inform the scoping of the FTC legislation and changes to the hierarchy of obligations for consents.

Water NZ notes these changes will progress through separate processes and engagement timeframe will differ, with initial feedback on FTC before 12 February 2024 and feedback on the NPS-FM may extend through to March. For completeness, commentary included in this letter should inform both proposals.

Water NZ's high-level comments are:

- New Zealand has a significant water infrastructure deficit. Significant investment is needed, without it, three waters service delivery and environmental outcomes will continue to decline.

- The exorbitantly long time for obtaining consents increases risk to water infrastructure providers. It often leads to increases project costs, delays contracts being awarded to contractors and procurement of materials with long lead times and acts as a barrier to three water services delivery addressing aging assets and investment in higher levels of service. Further, these delays can mean the environment, and often the water environment, remain in a degraded state for longer.
- While implementing fast track consenting could result in cost and time efficiency improvements for consent applications and approvals. It is vital that the “limited ability to decline” does not lead to unintended consequences and outcomes which see a worsening of the environment.
- At this point in the reform process, it is not clear what the intention is or what the practical effect will be of ‘rebalancing’ or removing the hierarchy of obligations of Te Mana o te Wai. Without addressing or holistically understanding the water environment during the consent process there is a real risk that the effect of granting a consent will be a further degradation, with associated negative wellbeing impacts.

Te Mana o te Wai comments

Water NZ notes that many waterbodies across Aotearoa New Zealand are degraded and have been for some time. There is a general community desire and expectation that improvements in aquatic health should and must occur. The calls for beaches to be open post rain events this summer are just one example. Further, under the NPS-FM there is a regulatory requirement that waterbody degradation will be halted and improvements in health made. The RMA requires engagement with communities and stakeholders at each step of the process, including with tāngata whenua.

We understand that for some applicants the information required to demonstrate an activity will be managed in a way that prioritises the hierarchy of obligations has been complex and added costs and time to the process. Further, we acknowledge that some consent applications have been declined, with Te Mana o te Wai factors contributing to the decision. Water NZ is not in a position to comment on whether the applications that have been declined should have been approved or not.

Across consenting authorities there is considerable variation in the supporting information required to demonstrate that natural and physical resources will be managed in a way that gives effect to Te Mana o te Wai, and subsequently the consent conditions imposed.

The capacity of tāngata whenua to participate in consenting processes, and particularly to be involved in providing input into Te Mana o te Wai dialogue is often strained. This can contribute to consenting delays. However, these capacity constraints do not mean the overall framework is flawed. Rather that there is a need to ensure all those involved in consenting applications, including tāngata whenua, are resourced, trained and funded / remunerated appropriately.

At this point in the reform process, it is not clear what is intended by the expression “rebalancing Te Mana o the Wai hierarchy”. Is it a shifting of the information burden, or a loosening of the activity and or development rules with a potential for associated environmental degradation?

If it is about shifting the “information burden”:

- Is the intent to reduce the information burden on applicants through requiring consenting authorities to provide more information about the water environment in which the applicant is wanting to develop/operate?
- Will more prescriptive guidance be developed by regional councils?
- Will standardised approaches and conditions be developed by Ministry for the Environment?
- Is the intent to require greater certainty and consistency of process and requirements across the country? (It should be noted that the concept of Te Mana o te Wai is “place based”.)

If it is about “loosening development rules”, changes in the freshwater values will have consequences, and risk perpetuating the degradation of the water environment.

From Water NZ’s perspective, the application of the Te Mana o te Wai hierarchy through the consent process has played an important role in slowing aquatic degradation and cumulative negative impacts on fresh and coastal waters. As the Water NZ purpose statement articulates “Ka ora te wai, ka ora te whenua, ka ora ngā tāngata | If the water is healthy, the land is healthy, the people are healthy”. The prioritisation of the health of water and community needs in decision making remains essential.

Fast Track Consenting comments

Nationally, regionally and locally significant infrastructure definitions

The majority of Regional Plans consider water and drainage networks as regionally significant. Local authorities consider water and drainage networks as locally significant either in their District Plan or they are declared as strategic assets under the Local Government Act 2002 (LGA). The RMA and National Policy Statement for Urban Development (NPS-UD), however, do not include water supply, drainage, flood control, or sewerage networks as nationally significant infrastructure. Unlike other utility sectors, there are no national water or drainage networks.

The approach to identifying and prioritising significant infrastructure proposals in the FTC legislation must align with the approach and existing definitions of significant national, regional and local infrastructure under the RMA. This will help avoid inconsistency, misalignment, and confusion, both across infrastructure and the country.

Te Waihangā Infrastructure Commission recommends that there is a common definition of what counts as critical infrastructure and a framework for identifying specific infrastructure assets. This would be appropriate for aiding the FTC prioritisation.

Critical assets are those that are likely to result in more significant financial, environmental and social cost in terms of the impact on agreed level of service. They may not necessarily have a high probability of failure. The more critical – or significant – an asset, the better management it requires.

National policy direction

Water NZ strongly supports national consistency and direction. To aid the FTC process we note the plethora of approaches to matters that should be dealt with at a national level. Some examples in the water space are:

- Varied approaches to the setting of limits and regulatory frameworks for freshwater.
- Every wastewater treatment plant having different design and treatment standards.
- Significant gaps in flood risk information and how it is developed. Variations between levels of service, design standards, use of planning controls and policies related to flooding and flood protection.
- Every district plan adopting different definitions for terms that should be consistent across the country.

It is critical that there is national guidance addressing the above issues to accompany any FTC framework.

The integration of land use planning and other natural and physical resources

We see multiple benefits to all infrastructure sectors and other entities from taking a more co-ordinated, future focused approach to capital planning and development.

In Water NZ's view, a requirement for integrated planning of public infrastructure provision and land development would provide sequence and certainty to network infrastructure construction and funding and help prioritise FTC applications.

Likewise, we consider integrated plans should specifically identify areas with infrastructure constraints to provide guidance about areas where any development or significant change in use needs to be avoided or carefully managed because of infrastructure and natural resource limitations.

How the FTC system is resourced will be critical

Implementing the FTC system poses significant resourcing and capacity challenges on all infrastructure sectors involved, noting the significant skills capability and capacity required for staffing the Expert Panels. It is imperative that enough resource is provided for fast-tracking to occur in the timely manner envisaged.

Fast tracking must be balanced with local consultation and democratic input from the communities, not just key stakeholders, and in particular resourcing and capacity and capability development for tāngata whenua.

Central government must provide funding to ensure iwi/hapū can participate in the new system, particularly given its role as the Treaty partner. This includes supporting tāngata whenua to build the necessary capability and capacity to engage.

Water specific FTC considerations

From the water sector perspective, the FTC regime will need to consider:

- The ability to supply water, now and in the future and to new (community) developments. We suggest 'insufficient source water' as a grounds for rejection for an FTC.
- The efficiency of use between water takes and discharge (water leaks and unaccounted for water can increase the water take). The legislation must include an enabling framework for allocating freshwater that incentivises efficient water use and conservation

within a catchment. Similarly, human drinking water, sources, protection, allocation and efficient use need consideration through any FTC process. We support work that addresses over-allocation.

- Availability, capacity and performance of wastewater treatment plants and networks to service new developments. We suggest 'insufficient wastewater network capacity' as a grounds for rejection for an FTC. This is imperative in catchments where there are currently many wet weather wastewater overflows and non-compliant wastewater treatment plants.
- National guidance on the identification of natural hazard risk. There should be a requirement to have regard to national climate change risk assessments prepared under the Climate Change Response Act 2002. We must avoid building or intensifying infrastructure provision in high hazard risk areas, for example, flood plains and coastal fringes.
- Nature-based solutions are preferred over hard-engineering solutions in providing natural hazard mitigation such as making room for rivers, prescribing water sensitive urban design (WSUD) and protecting streams and wetlands.
- The impacts on river and catchment dynamics from new dams, in catchment storage, water takes or gravel extraction and the impacts downstream to ecology, water availability and flooding risk.
- The cumulative effects of land use activities. These are one of the most urgent and complex problems, for example wastewater overflows, gross pollutants (litter and floatables) heavy metals, nitrates and sediment run off, run off volumes, water takes. Planned and potential future development, without an integrated management framework, has the potential to hasten the current degraded water environment.
- Recognition that freshwater quality depends mainly on the dominant land use in a catchment. Integration of drinking water, wastewater and stormwater asset management with urban development planning on a catchment basis for economic and environmental water quality outcomes is needed.
- Mātauranga, connection and knowledge of the tāngata whenua have insights that integrate cultural, environmental, and social decisions.

Conclusion

Growth and a healthy environment are not mutually exclusive. However, the two do pose complex resource and land use planning challenges. Ensuring that environmental values are met, and infrastructure and housing provision continues in an efficient, effective and sustainable way is paramount.

Water NZ recommends that a more holistic approach is taken, across all reforms and other programmes, to broader infrastructure planning and regulatory frameworks to ensure consistency, efficiency and ultimately good environmental and economic outcomes while ensuring communities have safe delivery of essential services.

Water NZ thank the Ministry for the opportunity to provide comments and suggestions to develop fast-track consenting legislation and to changes to the hierarchy of obligations contained in Te Mana o te Wai.

We look forward to continuing to work with the Government to refine and contribute to resource management reform policy, regulation and delivery.

If you have any queries in relation to this submission please contact Nicci.Wood@waternz.org.nz

Ngā mihi nui



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