



New Zealand
Planning Institute[®]
Te Kokiringa Taumata



NZPI Submission on “Freshwater 2013 and beyond”

8 April 2013

1. Introduction

The New Zealand Planning Institute (NZPI) welcomes the opportunity to provide comment on the “Freshwater Reform 2013 and beyond” reform package.

Established in 1949, NZPI is the professional organisation representing planners and planning practitioners throughout New Zealand. NZPI is the “home of the planning profession and achieves a better future for NZ by championing the profession, promoting excellence and supporting its members. It aspires to empower planners and promote excellence.” NZPI membership is broad, and individuals within our organisation have a varied range of opinions and experiences which underpin this submission.

This submission is the product of consultation with all members. It has also been peer reviewed by members with expertise in the area of fresh water. This submission may not necessarily reflect the views of individual NZPI members, but rather, it reflects the views of a range of members, including minority views.

2. Overall comments

NZPI members support the efforts underway to address a number of challenging issues relating to the management of one of New Zealand’s most important and valuable resources. That general support and the recognition of how critical fresh water is to the future of New Zealand has led NZPI members to make a number of overarching comments concerning the proposed reforms.

Timeframes - Short

NZPI members agree with the discussion document that water reform is a priority, alongside the wider Resource Management reforms, and that public participation, particularly in the early stages of planning, is an important element of good practice decision making. NZPI members therefore reiterate their concerns, already articulated in response to the “Improving our Resource Management System discussion document”, regarding the excessively short timeframes for submitting on the package of water reform proposals.

Timeframes - Unaligned between central and local government

Members have also voiced concerns relating to the timing of this document’s release. Coinciding as it does with the release of the Improving our Resource Management System discussion document, the Auckland Unitary Plan, the Land Use Recovery Plan for greater Christchurch, and the Canterbury Land and Water Regional Plan process, few residents, planners and organisations will be able to give this water reform package the attention it deserves. Many members have advised that they will have to prioritise since they do not have the resources to submit on all of the current reforms under consultation.

Timeframes - Unaligned within central government

Some NZPI members also expressed concern that this apparent lack of coordination and alignment has been further compounded by the submission deadline for the Improving our Resource Management discussion document. Members noted that the public meetings and hui for the Freshwater reform proposals and the Improving our Resource Management System discussion document were combined with no prior notification, giving attendees little opportunity to prepare or engage at the level necessary.

3. Today’s Challenges

The freshwater reform discussion document introduces a range of initiatives central government intends to implement over time. While in principle NZPI members support a number of initiatives

articulated within the discussion document, members do wish to provide the following specific comments in response to problem statements.

a) Regional or national approach

While NZPI members recognise that freshwater management is a national issue, it appears from the information provided in the discussion document that a large proportion of the over-allocation and water quality (nitrate, phosphate and cadmium) issues are, to varying degrees, widespread across New Zealand. Members have noted that the maps on pages 15 and 17 require greater detail such as quantitative regional data.

Members query, however, whether a fully national approach is warranted, or whether more emphasis should be placed on providing assistance to the relevant regions as a priority, with the learning and success applied nationally at a later stage.

NZPI members are aware, for example, of the significant work that is already being done by the Canterbury Regional Council, both in terms of the proposed Canterbury Land and Water Regional Plan and the community-based implementation of the Canterbury Water Management Strategy (CWMS). Members are concerned that this significant work not be undermined by any nationally led initiative.

b) Decision making processes

NZPI members acknowledge the costs and timeframes associated with Resource Management Act 1991 (RMA) processes and agree in principle with making these processes more efficient.

However, members seek greater clarity regarding whether this issue is any greater for freshwater management than for other aspects of resource management planning. While the discussion document indicates that a lack of enforceable limits has led to inefficient consent by consent decision making, members note that this particular issue is addressed to some extent by the National Policy Statement for Freshwater Management 2011 (NPS FM).

In saying this, the current NPS is limited, requiring only the setting of a minimum flow (which is not defined and could be quite poor) and a limit (again which is not defined and could be quite excessive). Members note that the NPS is silent in defining over-allocation.

Members seek greater direction to guide good decision making, and recommend that central government provides councils with the necessary complementary tools to enable implementation of the NPS.

Some members note that the proposed National Environmental Standard Ecological Flows and Water Levels could have addressed the issue of appropriate minimum flows and allocation, and recommend that government progresses this NES as a priority to support its successful implementation.

c) Water not used for its highest value uses

NZPI members recognise that this topic has been the subject of much debate over many years – particularly given the “first in, first served” approach for water allocation typically adopted throughout New Zealand. However, determining what represents the highest value is very difficult, and moving to higher value uses over time is a significant challenge, particularly given current investment. This point is addressed further in our comments below.

d) Freshwater management is insufficiently adaptive and dynamic

This issue statement discusses the difficulties in responding to change. While some NZPI members agree in principle with this statement, they note that it is not confined to freshwater management. This statement is also relevant to all areas of planning and resource management where increased knowledge, changes in society expectation, and other factors, lead to or necessitate a change in approach. Members have also noted that it seems artificial to have separated the issue of water reform from the broader Improving our Resource Management System discussion document.

NZPI members note, however, that to some extent, adaptive planning and management processes are inconsistent with the discussion document's stated desire for plans that provide more certainty. For example, the NPS FM requires allocation limits to be established for water bodies to provide certainty, clarity and efficiency of process. However, having established limits, councils are then required to implement a plan change to amend them (up or down) if understanding of the resource changes. NZPI members note that there is a tension between providing greater specificity/certainty and enabling flexibility and adaptation.

4. Planning as a Community: Quality decision-making

Reform 1: Collaborative planning process

NZPI members support the introduction of processes to improve community involvement in freshwater management, particularly in respect of setting objectives for freshwater bodies. International experience suggests that resource management processes that have significant buy-in from communities are more likely to be efficient and effective. Furthermore, evidence shows that a genuine collaborative process may be less costly than the cost of uncertainty, litigation, and lobbying. In developing a process to improve stakeholder and community engagement, NZPI members suggest that further consideration be given to the following:

a) The resources required to implement effective stakeholder involvement

NZPI members note that practice suggests that intensive community engagement, using transparent processes, can improve outcomes relating to freshwater management.

There is clear international evidence that "if stakeholders view the process as both transparent and fair..., then it is far more likely that they will be committed to achieving these outcomes".¹ Likewise, the United Nations promotes locally generated solutions developed with stakeholders because they are "more likely to lead to appropriate actions, to promote flexible and adaptive working practices".² The U.S. Environmental Protection Agency recognises that "although engaging and involving stakeholders may be a long and sometimes frustrating process, it's still the best way to conduct comprehensive watershed assessments, identify and target problems, implement remediation strategies, and institute long-term management strategies".³ There is further evidence that while the institutional context is structured around adversarial approaches to collective decision making that discourage collaboration, shared power results in shared problem solving.⁴

A number of members recognise that the collaborative approach taken by the Land and Water Forum (LAWF) has moved New Zealand closer to a common direction for water management throughout the country. However, members note that while valuable, it has been a time-consuming and costly exercise, relying on the good will of many of the stakeholders. Initiatives such as that undertaken by the LAWF and the CWMS require the commitment of significant staff and other resources in order to be effective and ensure representation across stakeholders and the community. NZPI members have concerns about the transaction costs to councils and participants required to undertake a similar process. Members recommend that consideration should therefore be given to how this approach will be resourced, prioritised, or otherwise streamlined to ensure it is effective and affordable.

¹ Sevaly, S. 2001. Involving stakeholders in aquaculture policy-making, planning and management. In R.P. Subasinghe, P. Bueno, M.J. Phillips, C. Hough, S.E. McGladdery & J.R. Arthur, eds. *Aquaculture in the Third Millennium*. Technical Proceedings of the Conference on Aquaculture in the Third Millennium, Bangkok, Thailand, 20-25 February 2000. pp.83-93. NACA, Bangkok and FAO, Rome.

² United Nations. Retrieved from

http://www.un.org/waterforlifedecade/swm_cities_zaragoza_2010/stakeholder_engagement.shtml

³ U.S. Environmental Protection Agency. *Getting in Step: Engaging and Involving Stakeholders In Your Watershed*. Available from: cfpub.epa.gov/npstbx/files/stakeholderguide.pdf

⁴ "Collaborative Governance Practices and Democracy," by David E. Booher, *National Civic Review*, 2005. Available from: <http://www.csus.edu/ppa/documents/facultyscholarship/Collaborative%20governance%20practices%20and%20democracy.pdf>

Members also seek greater detail, and caution that without this there will be uncertainty and inconsistency across regions. NZPI members seek clarity on how this collaborative process aligns and integrates with the single resource management plan process and one plan per district.

b) Good management requires good information

Members have concerns that an important point not addressed in this section is that good resource management decisions require good information and in particular, an understanding of the consequences and implications of different approaches and requirements. This is the case irrespective of whether objectives/decisions are being set by communities/stakeholders or by councils through more traditional approaches. Ensuring that there is an appropriate and robust assessment of alternatives and consequences is essential to collaborative processes – just as it is for all resource management and planning under section 32 and the associated requirements of schedule 1 RMA.

c) Hearing process

In principle, NZPI members support improved and streamlined hearing processes. However, this needs to be balanced with the rights of individuals to be involved in the process. This issue is addressed in more detail in NZPI's submission on the Improving our Resource Management System discussion document.

5. Reform 2: Effective provisions for iwi/Māori involvement in freshwater planning

NZPI members support initiatives to improve iwi/Māori involvement in freshwater management and planning. However, members note that the proposal is vague and needs to provide clarity regarding the level of engagement, how, and what level of statutory weight it will be given. It is difficult to see and comment on how effective these changes may be without having access to the proposed detail. NZPI members believe that it is critical that any advice or recommendations by iwi/Māori be consistent with the principles of natural justice and fair process in the hearings process. For example, NZPI members would not support a separate line of advice/recommendations being provided to a council after the hearings panel had made their recommendations to the council.

6. Reform 3: A National Objectives Framework

NZPI supports the development of a National Objectives framework to give greater clarity and nationwide consistency to the approach to freshwater management, and the implementation of the NPS FM. In developing such a framework, members recommend that consideration be given to the following:

National “bottom lines”

The establishment of “bottom lines” is challenging in any circumstances as they must be set with a full understanding of the consequences and implication/costs of the standards that are set:

- a) Setting a minimum standard that is too stringent may result in excessive cost to users and the community, or lead to a situation where it becomes irrelevant for many water bodies.
- b) Setting a minimum standard that is too low may result in the degradation of water quality – in essence becoming a permission to pollute.
- c) The health of a water body is the result of a complex interaction of inputs. Establishing bottom lines for water quality may not achieve the desired objectives unless there is a robust understanding of the other contributing factors.

Achieving robust and relevant bottom lines at a national level will be a challenging process that requires significant consideration and assessment of the implications/costs of the alternatives, and the applicability of the standards across a wide spectrum of environments and land use activities.

NZPI members caution that the setting of national bottom lines is not a simple task and should be approached carefully. The consequences of setting standards that are not relevant or do not deliver the desired outcomes could be significant. However, members cite the positive example of National

Environmental Standards for Air Quality, which has set national air quality standards for communities to achieve, and has enabled councils to focus on how to achieve these targets. NZPI members support further engagement on the development of the national framework and would welcome the opportunity to be engaged in this process.

7. Reform 4: Further national direction and guidance on setting freshwater objectives and limits

NZPI members provided significant feedback on the proposal for greater national direction and guidance in the Improving our Resource Management System discussion document. That feedback equally applies to freshwater. NZPI members support the proposal to develop guidelines that will clarify when and how each national tool or combination of tools could best be applied. NZPI members believe that the development of those tools and resources should be informed by a comprehensive consultation process.

8. Managing Quantity- Reform 6: Freshwater accounting systems

Good information on water use is critical to freshwater management and NZPI members support initiatives to improve the collection and assessment of water use data. However, central government needs to be cognisant of the cost of such big data on users and the council, which cumulatively may be significant.

9. Managing Quantity- Reform 7: Improving the efficiency of use

NZPI members support the development of “toolkits” to help users make decisions on using water more (technically) efficiently. Consideration should also be given to specific regulatory mechanisms to ensure this occurs (as per the third bullet point, “GMPs that prove to be widely applicable ...” (p. 39)). While most regional plans and many water permits include requirements for water efficiency, it is important that these are given effect to.

Members note that the first paragraph of this reform refers to improving (technical) efficiency by measures such as tradability. As per the definitions provided with the discussion paper, technical efficiency is more related to wastage and ensuring every bit of water is utilised effectively. Methods such as tradability are more associated with allocative-economic efficiency – ensuring that outcomes are maximised/highest value per unit of water, and dynamic efficiency – adjusting over time to improve value. Members note that ensuring that those who need water most are given greater access to it does not necessarily mean that they will use it more efficiently.

10. Managing Quantity - Reform 8: Specification of permits

a) Specification of allocation

NZPI members recommend that central government gives some consideration to how to specify permits to avoid unused allocation to be locked up for the permit duration. A number of members support this partial lapsing, and the Resource Management (Measuring and Reporting of Water Takes) Regulations 2010⁵ enable this to be effectively measured for takes over the measurement threshold. One method of doing this may be to specify partial lapsing of resource consents for unused allocation. That is, that part of the allocation that is unused lapses after a specified period of time. Such an approach would minimise the need for consents to be reviewed to reduce allocation volume where a proportion is unused. NZPI members would be happy to work with central government to address this issue.

⁵ Section 360(1)(d) of the RMA. Available from: <http://www.mfe.govt.nz/rma/central/measuring-reporting-water-takes.html>

b) **Permit durations**

While some NZPI members agree with the statement that “shorter term” results in greater investment uncertainty for users, this needs to be balanced against the arguments for shorter duration permits including:

- The ability to move freshwater to higher value/more efficient uses as they arise;
- Minimising locking up of water for long periods of time, particularly if the allocation is not fully utilised; and
- Greater ability for adaptive management.

NZPI members recommend that guidance be provided regarding circumstances where longer duration permits are appropriate to provide certainty and where shorter term permits are necessary to provide for more effective resource management and the ability to adapt to change. A “one size fits all” approach to permit duration is unlikely to lead to effective freshwater management. NZPI members in councils have suggested that they be involved in this process, as they have much of the required expertise.

Members also recommend that consideration be given to requiring permits within a defined catchment to have a common expiry date, to enable allocation decisions to be made on a cumulative, whole of resource/catchment basis. This technique has already been adopted by a number of regional councils, and has worked very well as it can be used to set the stage for a collaborative process. However, the proposed changes to the timeframes for consents may act to hinder this practice, unless otherwise specifically exempted.

11. Dealing with over-allocation

NZPI members agree that addressing over-allocation is critical issue that balances the desire to reduce allocation volumes against the existing investment that users have made on their property and equipment. NZPI members support initiatives that seek to address over-allocation in a progressive manner that is fair to users, while improving environmental outcomes for interim values. Members note that section 68(7) was used to reduce allocations where they were allocated in the Waitaki Catchment Water allocation plan, and recommend that more guidance on how this section can be used for best effect should be provided as a priority⁶.

12. Dealing with unauthorised takes

While NZPI members appreciate the desire to encourage people with unauthorised water take to come forward and obtain the appropriate authorisation, it is important to ensure equity with those users who have authorised their takes correctly. Members do not support giving special treatment or streamlined processes to illegal users, or indeed any advantage over lawful or other potential users as a result of their illegal actions.

13. Managing Quantity: Longer term issues

a) **Permit duration**

This has been discussed earlier in the submission.

b) **Alternative tools for initial allocation**

There has been significant debate over the principle of “first in, first served” as an allocation mechanism for fresh water. NZPI members welcome further debate regarding alternative

⁶ Waitaki Catchment Water Allocation Regional Plan. Available from: <http://www.mfe.govt.nz/publications/water/waitaki-regional-plan-sep05/waitaki-regional-plan-sep05.pdf>

mechanisms and principles for water allocation. While there is a desire to move to a system that gives preference to higher value uses, this is difficult to implement in practice for a number of reasons:

- It is difficult to define “value” in a way that enables competing applications to be assessed against each other.
- In most circumstances, applications are not competing where there is allocation available. Therefore, this raises question regarding whether there is a minimum “value” benchmark that all applications must reach to receive an allocation. If so, members query how this will be determined in the context of the resource, its pressures and potential uses.
- Market-based systems and willingness/ability to pay are not necessarily the best measures of value.
- Market-based systems do not value the ecosystems services components of freshwater and its associated biodiversity and the potential for irreversible loss of freshwater ecosystems and species.
- Market-based systems do not value the recreation and amenity components of freshwater and the potential for irreversible loss of recreation opportunities.
- Market-based systems should only focus on the allocatable extractive component of the water “cake” once the environmental flow requirements have been established.

This is a vexing and challenging issue that warrants further thought and discussion. NZPI members look forward to on-going discussion on allocation mechanisms.

14. Managing Quality - Reforms 9 - 11

As a general observation, NZPI members note that there is significantly less emphasis on the management of water quality than there is on water quantity. NZPI members are concerned that some of the greatest freshwater challenges facing New Zealand relate to water quality and significantly greater emphasis should be given to this issue in the future freshwater framework. Matters for consideration include:

a) A wider suite of mechanisms to address the adverse effects of existing land uses and discharges on water quality

The proposed focus of science and good practice, both by councils and individuals, appear minimal when compared to the far greater suite of approaches to managing water quantity. NZPI members suggest that further consideration is given to a more comprehensive approach to improving water quality tools to deliver or incentivise the delivery of progressive reductions in point and non-point source discharges.

NZPI members seek recommend greater focus on science because national objectives framework will require scientific input. Members also seek greater focus on existing examples of current practice around the country where the issues are being addressed, such as water quality, for example, Lake Taupo, Te Arawa Lakes, Horizons One Plan, and Otago Regional Council’s proposed Plan Change 6A.

b) Tools to assist with the integrated management of freshwater and land

Improving integrated management of fresh water and the use and development of land is an objective of the NPS FM. The intensification of land use, particularly for dairying, will place greater pressure on our freshwater resources both in terms of quality and quantity. Members recommend that tools, including integrated regional and district planning approaches, should be developed to provide guidance on how to manage this challenging issue while providing for economic growth and development.

15. Conclusion

Thank you for the opportunity to provide feedback on “Freshwater Reform 2013 and beyond”. We trust that these comments and recommendations provide useful feedback for water planning as part of the on-going RM reform process.

We would welcome the opportunity to meet with you and Ministry officials to discuss our feedback more fully. Should you have any queries regarding the above submission content, please contact either of the following:

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Yours sincerely,



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