



Aide memoire: Progressing Changes to the Freshwater Management System

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Actions sought from ministers

<i>Name and position</i>	<i>Action sought</i>
To Hon Chris BISHOP Minister Responsible for RMA Reform	Forward to Hon McClay, Simmonds, and Hoggard

Appendices and attachments

Appendix 1: Freshwater National Direction and Regulations System Overview
Appendix 2: BRF-3974 - Overview of Māori Freshwater Rights and Interests

Key contacts at Ministry for the Environment

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Progressing Changes to the Freshwater Management System

Purpose

1. This aide memoire sets out matters for Ministers to consider and discuss to progress changes to the freshwater management system and the review and replacement of NPS-FM:
 - i. The current freshwater management system
 - ii. Setting the objectives of the review
 - iii. Key considerations
 - iv. Potential challenges and complexities
 - v. Establishing a work programme and Ministerial responsibilities
 - vi. Māori rights and interests and Treaty settlement obligations.

The current freshwater management system

2. The current freshwater management system (the system) sits within the Resource Management Act 1991 (RMA) and its purpose to promote sustainable management of natural and physical resources. Most of the specific freshwater requirements sit within national direction and regulations made under the RMA:
 - i. The National Policy Statement for Freshwater Management (NPS-FM)
 - ii. The Freshwater Planning Process (FPP)
 - iii. The National Environmental Standards for Freshwater (NES-F)
 - iv. Resource Management (Freshwater Farm Plans) Regulations 2023 (Farm plans)
 - v. Resource Management (Stock Exclusion) Regulations 2020 (Stock exclusion).
3. There are other pieces of national direction that are relevant and form part of the system, although their primary purpose is not the management of freshwater, such as:
 - i. Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 (NES – Drinking water)
 - ii. National Policy Statement for Renewable Electricity Generation 2011 (as it impacts freshwater through hydroelectricity generation activities)
 - iii. Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 (water metering regulations).

4. These instruments are required to be given effect to by Regional Council planning and resource consenting processes, which is where decision making ultimately impacts freshwater users.
5. The interaction between national instruments, and between national and regional instruments is complex, and changing one part will impact other parts of the system. It therefore makes sense to consider changes to these instruments as part of a coherent package.
6. More information on each of the instruments and system overview diagrams are provided in **Appendix 1**.

The NPS-FM is central to the freshwater management system

7. The NPS-FM's main function is to direct regional councils' plan making and management of freshwater (though some provisions also apply to territorial authorities). The first NPS-FM was made in 2011 and it has been substantially revised since then in 2014, 2017 and 2020. It rose from concerns that councils were not effectively managing cumulative effects, diffuse discharges and urban water.
8. The provisions apply to all freshwater bodies in both rural and urban settings. Urban water tends to be significantly more degraded than rural waterbodies, though urban catchments make up a very small proportion of freshwater.
9. The NPS-FM requires councils to set environmental limits through three key provisions:
 - i. **At least maintain** requirements – councils cannot set targets that are worse than the 'current' state (eg, cannot degrade). This has been a requirement since 2014 and is driven by section 30 in the RMA which requires councils to "maintain or enhance" waterbodies.
 - ii. **National bottom lines (NBLs)** – when councils set targets they must be at or above the NBLs. The number of attributes with NBLs were expanded in 2020, including some attributes without NBLs, but the framework itself was introduced in 2014. Two of the most impactful NBLs (periphyton which relates to nitrogen and *E. coli* which relates to human health) are currently the same as when they were first introduced in 2014, (noting that the *E. coli* attribute has had some refinements in how and where it applies). Major hydro schemes and water with naturally high contaminants are exempt (note the exemption from NBLs in specified vegetable areas was quashed by the court of appeal, **s(2)(h)**).
 - iii. **Councils' choice** following engagement with communities and tangata whenua. Councils can set their own targets/limits following engagement – and there is evidence that some communities are wanting higher standards than the status quo or NBLs.
10. The NPS-FM also requires councils to:
 - avoid overallocation both for water quantity and quality (defined as exceeding a limit)
 - develop ecological flow and water take regimes (as opposed to a simple low-flow cease take level for example)
 - involve tangata whenua in all decision-making processes (emphasis added)

- include ecological health, human health, mahinga kai, and threatened species as mandatory freshwater values that must be managed for.
11. There is no set timeframe for when targets/limits must be achieved. This is a choice for councils along with communities and tangata whenua. The NPS-FM includes direction that timeframes must be 'ambitious but reasonable'.
 12. Te Mana o Te Wai was amended and strengthened in 2020 version of the NPS-FM. The hierarchy of obligations was added and that hierarchy became the single objective of the NPS-FM, along with direction on how councils should give effect to it.
 13. Te Mana o Te Wai will likely influence decisions on where targets/limits are set, as well as timeframes to achieve limits. Te Mana o Te Wai and the hierarchy has also been influential in some consent decisions, though Cabinet has agreed to disapply the hierarchy from individual consents.
 14. Importantly, removing Te Mana o Te Wai provisions or changing the hierarchy would not, of itself, relieve the pressure on many farming communities or necessarily allow more primary industry, infrastructure, housing or renewable energy to be developed. That is because:
 - there are areas of New Zealand where waterbodies are well below NBLs and improvement to meet NBLs is required overtime, albeit they can choose long timeframes
 - the 'at least maintain' requirement will mean "headroom" may need to be created before developments that increase impacts on water can occur or the effects of the development will need to be fully mitigated creating costs (eg, managing the effects of stormwater)
 - councils must "have regard" to the NPS-FM when considering resource consent applications, including direction to avoid overallocation for example.
 15. Fast-Track approvals, once available, will likely address some of these issues for some projects, since Fast-Track is designed to prioritise the purpose of that legislation over considerations other relevant legislation (such as national direction).
 16. Māori have been heavily involved in policy development to date and have a high interest in the NPS-FM. 9(2)(h)
[REDACTED]
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Setting the objectives of the NPS-FM review

17. The Cabinet Economic Policy Committee has agreed a set of objectives for the wider reform of the resource management system (ECO-24-MIN-0022 refers):

making it easier to get things done by:

- *unlocking development capacity for housing and business growth;*

- *enabling delivery of high-quality infrastructure for the future, including doubling renewable energy;*
- *enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining);*

while also:

- *safeguarding the environment and human health;*
- *adapting to the effects of climate change and reducing the risks from natural hazards;*
- *improving regulatory quality in the resource management system;*
- *upholding Treaty of Waitangi settlements and other related arrangements;*

18. Alongside the objectives above officials have identified existing Cabinet decisions, coalition agreements and party manifesto commitments that relate to the freshwater management system.

Coalition agreement commitments

- *Rebalancing Te Mana o Te Wai to better reflect the interests of all water users*
- *Providing flexibility to councils in achieving environmental limits*
- *Enabling water storage.*

Wider Manifesto Commitments: Primary Sector Growth Plan and Getting Back to Farming¹

- *Reviewing wetland provisions to ensure these align with housing and development objectives and ensuring new wetlands are permitted*
- *Making vegetable growing a permitted activity*
- *Aligning stock exclusion regulations to local conditions*
- *Deferring intensive winter grazing requirements and aligning these to better fit local conditions*
- *Options for nationally consistent coastal water quality standards*
- *Options to simplify the rules and requirements for fish passage and culverts.*

19. Work on some of these proposals is already underway. Ministers should consider if the above proposals will be included in the scope of the NPS-FM review and any additional matters to be included. Ministers may also want to consider if certain parts of the NPS-FM can be ruled out of scope early to provide clarity on the direction of travel (eg, ruling out changing certain national bottom lines) or whether all aspects of the NPS-FM are to be reviewed.

Key considerations

20. In choosing what to prioritise and progress through the freshwater work programme, you may want to consider:

¹ National Party policy documents "[Primary Sector Growth Plan](#)" and "[Getting back to farming](#)"

- The overall balance and messaging a revised package of freshwater policies sends – to farmers, businesses, Māori, the general public, councils and internationally.
- Whether a resulting package is likely to be durable. Freshwater policy has been characterised by near constant change sending mixed signals to communities and investors. For example, it is possible that people invest based on one set of policies now, only for those policies to change in future.
- What level of change across what settings is needed to achieve your highest priorities – for example, to what extent do new instruments like Fast-Track or possibly spatial planning allow targeted adjustments to achieve specific objectives.
- What do you wish to adjust now and what might be left for Phase Three of RMA reform. This is especially relevant in respect of some aspects of Māori rights and interests and could help disentangle what you want to achieve from changes to national direction with other matters like allocation of freshwater takes and discharges.
- You may also want to consider a wider plan to make improvements to New Zealand's freshwater. Regional councils have been concerned that in many areas they do not have the tools, policy levers or capacity to address these issues on their own.
- It may be possible - working with councils, businesses, landowners and Māori - to integrate policies for climate change, biodiversity, adaptation and freshwater and achieve better outcomes for all parties.

Potential challenges and complexities

21. Officials will provide further advice on proposed changes to the system. However, there are general challenges that are likely to be faced in any review process:

- **Rebalancing Te Mana o Te Wai** – Given how Te Mana o Te Wai is woven through the NPS-FM, there are a range of potential approaches to this work. There is a significant intersection with Māori rights and interests in freshwater, discussed further below §(2)(h)
- **Different vehicles for 'on farm' regulation** – Both the NES-F and Freshwater Farm Plans set requirements at an 'on-farm' level. The NES-F provides alternative pathways to some activities that require Freshwater Farm Plans to be in place. Changes to either the NES-F or Freshwater Farm Plans need careful alignment and Ministers may want to prioritise or emphasise one approach or the other.
- **Aligning with other national direction and government priorities** – There is concern from Councils that current national direction does not provide sufficient certainty or clarity (for example do freshwater or housing outcomes come first?). Where national direction requires matters to be balanced this often leads to plans requiring more resource consents, instead of plans that set clear direction between

priorities. Ministers should consider the trade-off between providing certainty vs flexibility and the potential for additional consent requirements.

- **Relationship between national policy setting and local government implementation** – Developing freshwater plans is complicated and expensive for regional councils, change imposes additional cost. Councils have their own ambitions for freshwater, and where these do not align with government direction it can cause tension. Because of the previous 2024 deadline many councils have already invested time and money in to developing new freshwater plans.

Draft work packages and Ministerial decision making

22. Once Ministers have settled the scope of changes to the freshwater system it may be beneficial to divide this up into themes with a responsible Ministerial lead, for example:
 - **Overall system improvements and coherence / making it easier to get things done** (rebalancing Te Mana o Te Wai, flexibility for Councils in limit setting, consistent costal water standards, aligning wetland provisions with housing outcomes, culverts) – *Led by Minister Responsible for RMA Reform*
 - **Primary sector changes** (vegetable growing, stock exclusion, intensive winter grazing, water storage) – *Led by Minister for Agriculture*
23. Most changes to these instruments would be progressed through the RMA process to amend national direction. Officials can advise you on this and how it can be progressed alongside changes to other national direction instruments.
24. The RM Reform process establishes an RMA Reform Ministerial Group to provide Ministerial oversight and co-ordination. You may wish to consider if this is the appropriate group to oversee the NPS-FM review given the wide range of Ministers involved.

Māori rights and interests and Treaty settlement obligations

25. The review and replacement of the NPS-FM engages previous Crown commitments on Māori freshwater rights and interests² and obligations contained in specific Treaty settlements³. These commitments have been outlined in several recent briefings.⁴

² As recorded in the Supreme Court in 2013 (*New Zealand Māori Council v Attorney General* [2013] NZSC 6, [2013] 3 NZLR 31 at [145]).

³ Including, but not limited to, Treaty settlement redress for the Waikato and Whanganui rivers.

⁴ See Appendix 4 (BRF-3974 "Overview of Māori freshwater rights and interests"), BRF-4323 and BRF-4420 (regarding proposals on freshwater consenting, stock exclusion and intensive winter grazing for the first RMA amendment bill).

26. Concern and/or opposition from some iwi and Māori to “rebalancing” of Te Mana o te Wai has already been documented in letters to the Government.⁵ Key context around development of Te Mana o Te Wai is included in Appendix 1.
27. Well-planned, early engagement with iwi and Māori provides the best opportunity to uphold these commitments in a manner that achieves your objectives for the NPS-FM, as well as supporting your wider RM reform agenda. Officials can provide a briefing to support this, which would include commitments in Treaty settlements and other arrangements with specific engagement or process requirements.

9(2)(g)(i)

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9(2)(h)

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9(2)(h)



Next steps

38. Following Ministers' discussions, officials will prepare advice confirming the objectives, scope, timeline, Ministerial decision making arrangements, and approach to Māori engagement.
39. We will also prepare a Cabinet paper setting out these matters, aiming for a Cabinet date in late April.

Signatures



Hayden Johnston
General Manager
Natural Environment Policy
26/03/2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Appendix 1: Freshwater National Direction and Regulations System Overview

The National Policy Statement for Freshwater Management (NPS-FM)

NPS-FM is the cornerstone of the freshwater management system and requires regional councils to update regional policy statements and plans to give effect to it. First introduced in 2011 the NPS-FM has been significantly amended since then, with major amendments in 2014, 2017 and 2020.

NPS-FM contains one objective which is to ensure natural and physical resources are managed in a way the prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems*
- (b) second, the health needs of people (such as drinking water)*
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

Te Mana o Te Wai is articulated as the fundamental concept of the NPS-FM 2020. The concept includes the hierarchy of obligations (see the priorities above), and six principles of mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship, and care and respect.¹ Policy 1 of the NPS-FM requires freshwater to be managed in a way that gives effect to Te Mana o te Wai. A set of directions to councils are provided as to how the concept is to be implemented.

The initial inclusion of Te Mana o Te Wai in the 2014 NPS-FM and its further development (in 2017 and 2020) followed extensive engagement with iwi and Māori. This occurred in the context of Crown commitments recorded in the Supreme Court in 2013 regarding Māori freshwater rights and interests.²

The NPS-FM contains 14 further policies which must all be given effect to, these range from broad policies about insuring freshwater in managed in an integrated way, to specific provisions for the protection of trout and salmon habitat.

NPS-FM requires councils to set long term visions for their region and involve tangata whenua in all decision making. The NPS-FM contains a directive process Councils must follow in updating regional plan, known as the National Objectives Framework process (NOF), which requires the setting of limits to achieve environmental outcomes.

The Freshwater Planning Process (FPP)

RMA amendments in 2020 require that 'freshwater plans' must be progressed through the FPP rather than the standard plan making process, it also required Council to do this by December 2024 (now amended to 2027).

¹ These principles are defined at 1.3(4) of the NPS-FM.

² See *New Zealand Māori Council v Attorney General* [2013] NZSC 6, [2013] 3 NZLR 31 at [145].

FPP has fewer appeal rights, is governed by the Chief Freshwater Commissioner, decision making panels are made of freshwater commissioners (appointed by the Chief) and panels have a broader scope to recommend changes to plans.

The National Environmental Standards for Freshwater (NES-F)

The NES-F set requirements for carrying out certain activities that impact freshwater and freshwater ecosystems. The regulated activities include winter grazing, agricultural intensification, and some works in and around wetlands, amount other things.

Anyone carrying out these activities needs to comply with the standards and they override existing Council plan provisions.

Freshwater Farm Plans (FW-FP)

Part 9A of the RMA established freshwater farm plans as a regulatory tool that supports farmers and growers to identify, manage, and reduce on-farm risks to freshwater, in a way that is tailored to their individual farm and catchment needs.

Freshwater farm plans can be used as an alternative to resource consents. Currently, farmers can use a FW-FP to undertake intensive winter grazing (rather than get a consent).

Stock Exclusion Regulations

The stock exclusion regulations require stock to be excluded from specified wetlands, lakes and rivers more than one metre wide.

Dairy cattle, dairy support cattle and pigs must be excluded from the water bodies, regardless of the terrain. For other animals there are specific requirements depending on the slope of the relevant land.

Implementation of the freshwater system

Regional Councils are responsible for the implementation and enforcement of most of the system, including updating plans to give effect to NPS-FM and enforcing the specific requirements of stock exclusion regulations and NES-F.

There are some specific requirements of district councils but generally freshwater requirements of district councils flow from regional plans and policy statements.

The two below diagrams shows the interactions between the different parts of the wider resource management system (figure 1) and the specific parts of the freshwater management system (figure 2).

Figure 1: Freshwater management system

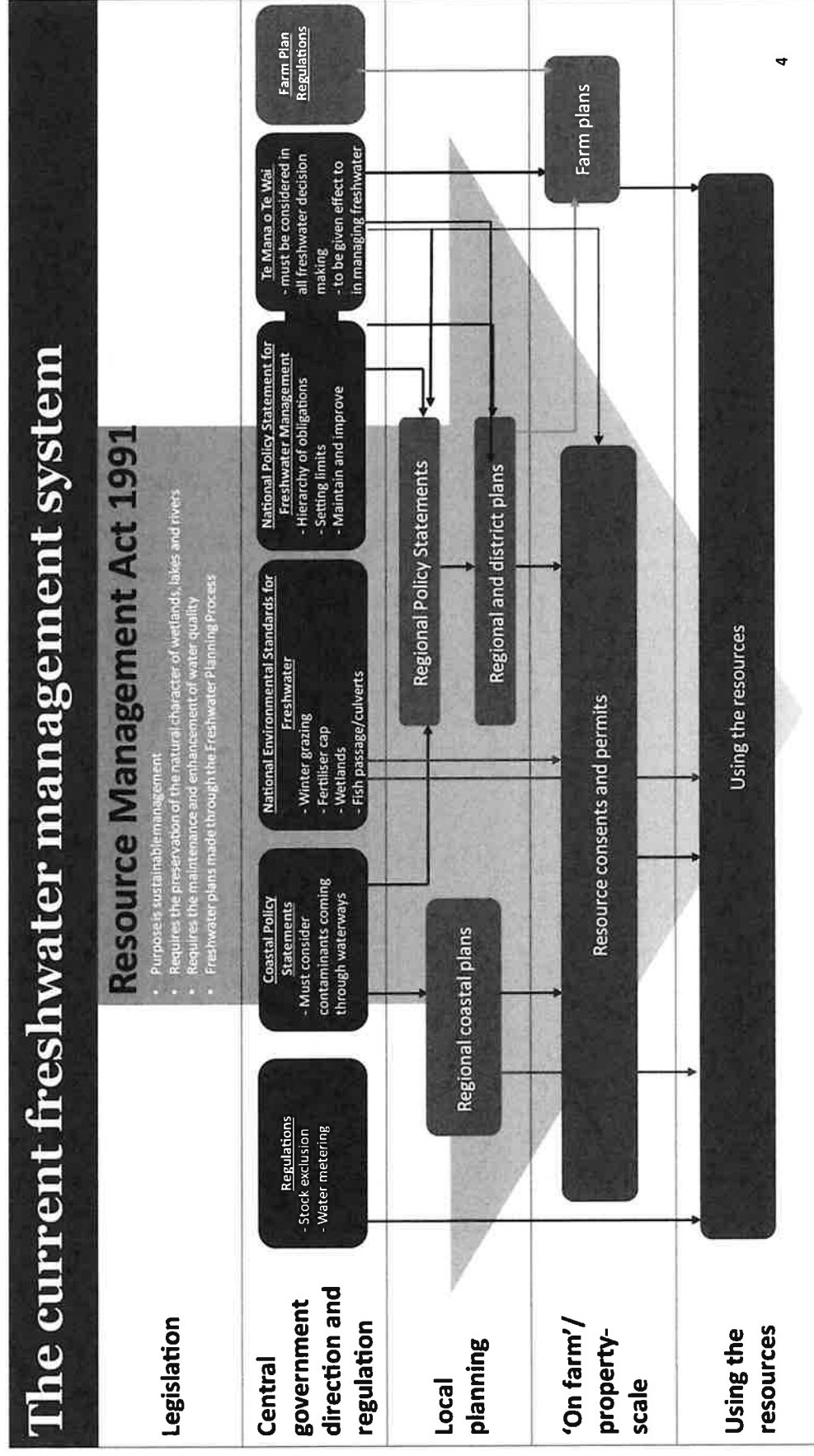


Figure 2: Draft Water policy package

