



Ministry for the
Environment
Manatū Mō Te Taiao

Ministry for Primary Industries
Manatū Ahu Matua



ESSENTIAL
FRESHWATER
WAI MĀORI
MĀTUATUA



A new freshwater planning process

Purpose of this factsheet

This factsheet provides a high-level overview of the new freshwater planning process (FPP) introduced by the Resource Management Amendment Act 2020.

The freshwater planning process

The freshwater planning process is a new plan-making process that regional councils and unitary authorities ('regional councils') must use for proposed freshwater provisions in regional policy statements and regional plans (excluding regional coastal plans). This process must be used for proposed regional policy statements or regional plans (or changes) that give effect to the National Policy Statement for Freshwater Management (NPS-FM) or otherwise relate to freshwater ('freshwater plans').¹ If only part of the planning instrument relates to freshwater, the council must use the FPP for that part, and use the schedule 1 process for the other parts.

The FPP was introduced to enable regional councils to make changes to their freshwater plans in a robust but more efficient way than the current RMA schedule 1 planning process.

The FPP will streamline decisions on freshwater plans by:

- requiring regional councils to notify freshwater plans that give effect to the NPS-FM by **31 December 2024** and make final decisions within **two years of notification**²
- establishing independent freshwater hearings panels with enhanced hearings powers, made up of expert freshwater commissioners, council and tangata whenua nominees

¹ Only freshwater plans notified after the Resource Management Amendment Act 2020 was enacted will be captured by the new freshwater planning process. Freshwater plans that were notified before enactment will continue to use the existing Schedule 1 process.

² Regional councils and freshwater hearings panel chairs can request an extension to the two year decision-making time frame. An extension can be sought at different stages of the FPP but the total period of all extensions on a particular freshwater plan cannot exceed 12 months. The Chief may accept, decline or partially accept the request.

- providing for submitter appeal rights to the Environment Court only in certain circumstances (see appeals discussion below).

Freshwater plans (or freshwater parts of planning instruments) can no longer use the streamlined planning process. However, the Minister may still call in a freshwater plan as a proposal of national significance.

Freshwater Commissioners

Chief freshwater commissioner

The FPP is overseen by the Chief Freshwater Commissioner (Chief) who will ensure the timely delivery of freshwater hearings. The Chief must be a current or retired Environment Court Judge and is appointed by the Minister for the Environment.

The Chief's role includes:

- determining the appropriate size and composition of freshwater hearings panels
- considering regional council and tangata whenua nominations to a freshwater hearings panel
- convening a freshwater hearings panel and appointing its members, including the chair
- considering any requests to extend freshwater planning timeframes from a regional council or chair of the freshwater hearings panel
- considering any variations to freshwater plans proposed by a regional council (after documentation provided to the Chief).

Freshwater commissioners

The Minister for the Environment will appoint freshwater commissioners to create a group of highly skilled commissioners who will be placed by the Chief onto regional freshwater hearing panels.

Freshwater commissioners must be accredited under section 39A RMA (Making Good Decisions certified) and collectively have knowledge of and expertise in:

- judicial processes and cross-examination
- freshwater quality, quantity and ecology
- the RMA
- tikanga Māori and mātauranga Māori.

The Chief will appoint two freshwater commissioners to sit on each freshwater hearings panel, one of whom will be the chair.

Overview of the Freshwater Planning Process

Figure 1 (below) illustrates the FPP and statutory timeframes.

Notification and pre-hearing stages

Under the FPP, regional councils will continue to prepare their freshwater plans and administer the public submissions process using the standard Schedule 1 RMA process.

The key features are:

- regional councils must publicly notify freshwater plans that give effect to the NPS-FM by 31 December 2024
- regional councils have two years from notification to make final decisions on the freshwater plan (subject to any extensions)
- for plans with non-freshwater content, councils must state which part of the planning instrument will use the FPP and give reasons
- regional councils must provide nominations to the freshwater hearings panel for the two council nominated members and forward on nominations provided for one tangata whenua nominated member
- the submissions process must be completed within six months of notification (unless an extension is sought and granted by the Chief)
- all relevant documentation must be provided to the Chief within six months of notification – including the notified freshwater plan, section 32 evaluation report, submissions, planning documents recognised by an iwi authority.

Figure 1: The Freshwater Planning Process



Freshwater hearings

Convening a freshwater hearings panel

After receiving the freshwater plan documentation, the Chief will convene a freshwater hearings panel (panel). A panel will generally have five members (no less than three but there may be more than five):

- two freshwater commissioners (from a pool appointed by the Minister for the Environment)
- two members who are nominated by the relevant regional council, and who may or may not be elected councillors
- one member with an understanding of tikanga Māori and mātauranga Māori who is nominated by tangata whenua. If no nomination is received, the Chief will appoint an accredited person with an understanding of tikanga/Mātauranga Māori of their own choosing.

The Chief may convene a panel of more than five members depending on the scale and complexity of the freshwater plan.

Panel members must be accredited under section 39A RMA (Making Good Decisions certified) unless the Chief is satisfied there are special circumstances. When appointing members to a freshwater hearings panel, the Chief will consider the need for collective knowledge or expertise in:

- judicial processes (including cross-examination)
- freshwater quality, quantity and freshwater ecology
- the RMA
- tikanga Māori and mātauranga Māori
- Te Mana o te Wai
- the local community and knowledge of local water use
- subject areas likely to be relevant to the work of the panel.

The relevant regional council is responsible for all hearing costs from the time the panel is convened.

Freshwater hearings

Once the panel is convened, the Chief will schedule a hearing for the panel to hear all submissions on the freshwater plan. Panels have enhanced hearings powers compared to standard hearings panels under the RMA. This is necessary to ensure freshwater plans, submissions and evidence presented to the panel are thoroughly tested given the restricted appeal rights.

Panels can:

- decide to accept or reject any late submissions
- recommend to the relevant regional council that a variation be made to a freshwater planning instrument
- permit or prohibit cross examination (and regulate the conduct of cross-examination)
- enable pre-hearing meetings
- direct a conference of experts
- refer submitters to mediation and other dispute resolution
- commission reports

- appoint a special advisor(s)
- appoint a *friend of the submitter* (a person, usually a planner, who can advise submitters about the FPP hearings process).

Freshwater hearings panel provides recommendations

A panel must provide recommendations on the freshwater plan and submissions to the relevant regional council. Unlike the standard Schedule 1 process, panels can make recommendations that are outside the scope of submissions.

Recommendation reports must include:

- the panel's recommendations on the freshwater plan provisions and matters raised in submissions
- identification of any recommendations that are outside the scope of submissions
- the panel's reasons for accepting or rejecting submissions
- a further evaluation (section 32AA).

The panel must provide the recommendations no later than 40 working days before the two year period from notification expires.

Council makes decisions on recommendations

A regional council must decide whether to accept or reject each recommendation in the panel report.

For each recommendation it rejects, the council must decide on an alternative solution and provide a further evaluation report (section 32AA). Where it rejects a recommendation that is outside the scope of submissions, the alternative it decides on may also be outside the scope of submissions.

Regional councils must make decisions in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe, or joint management agreement.

The regional council must publically notify its decisions no later than 40 working days after being provided with the panel's recommendations.

Appeals

Appeal rights are restricted compared to the standard plan-making process. Avenues for appeal depend on whether the regional council accepts or rejects the panel's recommendation.

Where a council accepts the panel's recommendation, a person who submitted on that matter can appeal to the High Court on a point of law followed by an appeal to the Court of Appeal only. Where a council rejects the panel's recommendation, a merit appeal is available to the Environment Court by a person whose submission covered that particular matter.

Where a panel makes a recommendation that is outside the scope of submissions, appeals related to a decision on that recommendation will be open to *any person* who made a submission on any matter.

Further information

For further information about the FPP see the RMA. More detailed guidance on the FPP will be prepared for regional councils.

Find out more

Contact the Ministry for the Environment by emailing freshwater@mfe.govt.nz or visit www.mfe.govt.nz.

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