

**Office of the Minister for
Office of the Minister for Primary Industries**

Chair

Cabinet Economic Growth and Infrastructure Committee

Fresh Water: Allocation Work Programme

Proposal

1. This paper seeks Cabinet's agreement to the terms of reference for the freshwater allocation work programme. The work programme will take account of the following bottom lines.
 - Nobody owns freshwater.
 - No national settlement favouring iwi/hapu over other users.
 - Allocation determined catchment by catchment based on resource availability, efficiency of use, good industry practice and a positive contribution to regional economic development.

The paper also outlines the intended membership of a technical advisory group who will provide expert feedback on the feasibility of policy proposals put forward by officials.

Executive summary

2. New Zealand's freshwater management is in the process of significant change. By 2025 regional councils must set limits for freshwater quality and quantity that will maintain or improve water quality and enable the community's objectives for their waterways to be achieved. Councils must also develop plans to phase out any over-allocation.
3. Managing within these limits will constrain, in particular, additional discharges to water. Many catchments will also be approaching, at, or over the limit set for water takes or have not made specific allocations of assimilative capacity. In such catchments, the first-in first-served approach to allocation means that water and discharges may not always be allocated to the highest value use, and the current system lacks sufficient incentives for use to move to a higher value one. New approaches to allocation need to be explored to support efficient economic use of water in catchments that currently have few or no additional freshwater resources available for use.
4. In addition, during the High Court litigation on the mixed ownership model case, the Crown outlined a commitment to address iwi/hapū rights and interests in fresh water. The Government has, over the past several years, expressed its intention to the Freshwater Iwi Leaders Group (ILG) and to the Waitangi Tribunal to develop options for changes to the fresh water allocation regime in the context of managing within limits which are equitable to all users.

5. On 20 February 2016, we released a discussion document, “Next steps for fresh water”, which outlines further reforms to our freshwater management system. On allocation policy it indicated that the Government had not yet developed a package of proposals that would fully address the range of interests of those wishing to access freshwater resources.
6. We propose a phased programme of work over the next three years to develop, test, consult on and implement proposals to reform freshwater allocation. This work will be led by officials, who will have access to a technical advisory group. The ILG and their advisors will be engaged in the process in accordance with the Protocol between the Government and the ILG.
7. This paper seeks agreement to the Terms of Reference for the Freshwater Allocation Work Programme. These terms of reference including the structure of groups involved in the freshwater allocation work.
8. This paper also asks you to note our intention to establish a Water Allocation Technical Advisory Group to assist officials in developing practical and easily implemented options. This group will test the practicality of policy proposals and provide specific advice to officials on the technical aspects of the policy areas being addressed.
9. The policy proposals will be assessed for how they are consistent with the Government’s fundamental position that no-one owns fresh water. Equity issues will also be a key consideration in assessing options and the design of a transition pathway to an equitable allocation system.

Background

10. On 15 February 2016 Cabinet noted that the allocation of water resources remains an area for reform that will need to be progressed, including how allocation approaches may address issues of iwi/hapū rights and interests, and that policy development is continuing in this area (CAB-16-MIN-0034 refers). The consultation document “Next steps for fresh water” which we released on 20 February 2016 states that this work will be progressed over the coming months with a technical advisory group.
11. This Government has been undertaking phased, progressive reform of New Zealand’s freshwater management system.
12. In 2010 we introduced mandatory metering of freshwater takes to increase the proportion requiring measurement from 30 percent to 98 percent of the volume taken. In 2011 we introduced the first National Policy Statement for Freshwater Management (NPS-FM) under the Resource Management Act 1991 (RMA), requiring councils to set limits for freshwater quality and quantity. Limits must be set by 2025 and councils must develop plans to phase out any over-allocation. In 2014 we introduced environmental bottom lines for freshwater quality with the National Objectives Framework.
13. We are currently consulting publicly on further reforms to:
 - a. Refine the NPS-FM to improve direction on exceptions to bottom lines for catchments with significant infrastructure, introduce a mandatory monitoring method for ecosystem health, apply fresh water quality

- attributes to intermittently closing and opening lakes and lagoons, and clarify what it means to ‘maintain or improve overall water quality’
- b. Exclude stock from water bodies through regulation
 - c. Promote more efficient use of fresh water and good management practice
 - d. Improve iwi/hapū participation in decision-making about natural resources
 - e. Strengthen Te Mana o te Wai as the underpinning platform for community discussions on fresh water
 - f. Better integrate water conservation orders with regional water planning and allow for increased iwi participation
 - g. Set up the \$100 million ‘Next Steps for Freshwater Improvement Fund’.
14. Under the RMA, water is allocated on a first-in, first-served basis. most assimilative capacity has not yet been specifically allocated by councils within environmental limits. However, in catchments where restoration of water bodies has required substantial decreases in discharges, regional councils have begun developing new approaches for allocating discharge allowances. There is limited transfer of takes or discharges between users.
 15. First-in first-served is administratively simple and is an appropriate mechanism when a resource is not under pressure and not approaching sustainability limits. However, once demand for these resources starts approaching limits, the system lacks sufficient incentives for water and discharges to shift to higher value uses.
 16. If New Zealand is to enable enhanced economic benefit from the water resources available within environmental limits, it is critical to develop new allocation approaches for catchments under pressure that will enable a transition to more productive use of water and encourage sustainable economic development in the regions. In addition, water storage and distribution infrastructure plays an important role in increasing water reliability during times of low flow.
 17. We will need to develop an allocation approach that is in the best interests of all New Zealanders. In doing this we need to consider the fact the Crown has committed to considering how to address iwi/hapū rights and interests in a contemporary system for freshwater management. The Crown has stated to the Courts that the recognition of rights and interests in freshwater and geothermal resources must, by definition, involve mechanisms that relate to the ongoing use of those resources, and may include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use.
 18. The Waitangi Tribunal National Freshwater and Geothermal Resources Inquiry (Wai 2358 Stage 2) has been adjourned while the Crown has been developing reform proposals in collaboration with the ILG for wider consultation with Māori and the public. On 22 April 2016, the Tribunal issued a direction indicating that it will hold its first set of hearings before the end of 2016, focusing on the reform options proposed in “Next steps for fresh water”. The Tribunal stated that, in the meantime, the Crown should continue to develop reform options with the ILG on allocation policy and Māori economic development, after which the Tribunal would hold further hearings.

19. Many of our reform proposals have either emerged from or been based on recommendations of the stakeholder-led Land and Water Forum (LAWF). In 2015, we asked LAWF to provide advice on the best way to maximise the economic benefit of fresh water while managing within water quality and quantity limits. LAWF was unable to reach full agreement on a general approach to allocation for water quality. For the allocation of water takes, LAWF looked to preserve the value of existing authorisations, and proposed changes to allocation largely focussed on increasing efficient use and the ability to transfer consents.
20. The longer it takes to develop new approaches to allocation, the more difficult it will be for communities to transition to managing within the limits they set and to phase out existing over-allocation.

Comment

21. We seek Cabinet's agreement to a work programme on water allocation (both water takes and discharges to water). Draft terms of reference for the work programme are attached as Appendix 1 and the key elements are outlined below. We have discussed this draft terms of reference with the ILG, who expressed their support for the approach.
22. This will be a complex piece of work and is likely to have significant impact on the New Zealand economy. It is important to take an approach that ensures the policy options we are presented with are supported by a strong evidence base, and are well tested with those who can tell us how they are likely to play out, practically, on the ground. It will take time to do this and initially we will need officials to explore a wide range of options before narrowing down to those that are most feasible. Advice on options will include how they are consistent with the Government's fundamental position that no-one owns fresh water, and that fresh water needs to be managed at a local level, catchment-by-catchment.

Objective and scope

23. The proposed objective of the allocation work programme is to identify and develop options for the allocation of fresh water and discharges which, when implemented, will increase the sustainable economic and social benefits to New Zealand within environmental limits.
24. The first-in first-served allocation approach may still be suitable in catchments where there is adequate water or discharge capacity. The critical issue is to identify options for those catchments where water and assimilative capacity are scarce. Options for increasing the availability of the resources, such as water storage, will also need to be considered.
25. While the primary objective is to maximise economic benefits, a key consideration will be equity issues. These issues are complex and differ between discharges to water and allocation of water takes, given discharges are largely unallocated at present. Equity will be considered both in the assessment of the allocation approaches and the design of the transition to an improved allocation system.

26. We propose that all parts of the allocation system will be in scope. Examining the rights of existing users will be challenging. However, it is unlikely that we will be able to identify the most economically optimal options unless we do this.

Structure and timing

27. The work will be led by officials from the Ministry for the Environment (MfE), the Ministry for Primary Industries (MPI) and the Treasury (the “Allocation Team”). The Ministry for the Environment will also appoint nominees from the ILG to the Allocation Team. This will enable advice to be informed by iwi perspectives. These nominees will be subject to the same confidentiality requirements as officials.
28. The Allocation Team will engage with other departments with interests in the work programme as it develops advice. Lead Ministers will discuss progress and matters arising in the work programme with the Business Growth Agenda Ministers as required.
29. Given the complexity of these issues, the Allocation Team will commission and draw upon local and international expert advice (such as hydrological modelling or economic analysis). This will also include considering existing analysis, including LAWF recommendations, new approaches some regional councils are currently developing for discharge allocation, and how different approaches may apply in different situations. The Allocation Team will also be supported by a Technical Advisory Group (TAG), as described below. The Allocation Team will engage with stakeholders including LAWF and local authorities as necessary during policy development.
30. We are proposing the work be carried out in three phases over an estimated three years. Indicative timing is as follows.
 - The first phase will focus on identifying the full range of technical options for allocating water takes and discharges, and developing advice to Ministers on the options considered worth exploring in more detail. We expect to receive this advice by the end of 2016.
 - The second phase, to be carried out in 2017, will involve modelling, testing and refining the range of policy options agreed by Cabinet. This work will provide detail on the practicalities of implementation and the economic implications and officials will make final recommendations to the incoming government at the end of 2017.
 - The third phase, to be carried out in 2017-2018, will include public consultation on proposals and implementation through either amendment to the National Policy Statement for Freshwater Management, regulations or legislative change.

Technical Advisory Group

31. The Allocation Team would seek advice from a TAG appointed by the Ministers for the Environment and Primary Industries. We expect the TAG to be in place for at least the first two phases of work (approximately two years), supporting officials up to the point Cabinet has made policy decisions.

TAG skill base

32. The role of the TAG will be to assess the practicality of proposals being developed by the Allocation Team. Members need to bring practical experience rather than representing a sector or community group.
33. Members will have practical experience of water use and the options for meeting discharge requirements. Some members will also have a range of experience of current water management practice in New Zealand and potentially internationally.
34. Specific knowledge bases will be required in the following areas. Members may bring a mix of these knowledge bases:
 - a. water use including industrial use, hydroelectric generation, irrigation, primary production, water supply and waste management
 - b. local government planning and decision-making, particularly in respect of freshwater management
 - c. implications of the different options for managing within environmental limits, limit setting and catchment management
 - d. economics and structure of water markets and economic implications of the proposed reform.
35. On this basis, we intend to invite the nine people listed at Appendix 2 to join the TAG. Members will be appointed until the end of 2017 initially, with consideration of extension or reappointment at that point. Appendix 2 also sets out a brief outline of their individual skill bases.

TAG representativeness of appointments

36. We are satisfied that the appointment of the people listed in Appendix 2 will provide for a well-balanced Water Allocation Technical Advisory Group in terms of gender, age, ethnicity and geographic representation, and an appropriate mix of skills and experience.

TAG remuneration

37. The TAG is classified as a Group 4 level 2 advisory committee under the Cabinet Fees Framework. The fees for the TAG members are \$500 per day and the fees for the chair are \$625 per day. These fees are consistent with the Fees Framework.

TAG appointment process and consultation

38. We confirm that an appropriate process has been followed in selecting the proposed appointees, in terms of the State Services Commission appointment guidelines. In summary, that process comprised seeking advice from officials and reviewing the candidates' CVs. This process was appropriate because the TAG is an advisory committee only.

TAG conflicts of interest

39. We confirm that appropriate enquiries concerning conflicts of interest have been carried out, in accordance with the State Services Commission appointment guidelines, to identify any conflict of interest that could reasonably be identified.
40. Conflicts of interest were identified that are manageable. Most of the proposed TAG members have an interest in water allocation, either as a water user or as a representative of water users. This is because, to fulfil its purpose, the TAG needs members with recent, practical knowledge of water allocation so this perspective can be provided to officials responsible for policy development. For these members, the conflicts are that:
 - a. they will be providing advice to officials on matters in which they have an interest, possibly giving rise to bias or appearance of bias, and
 - b. they will learn of the range of potential options for new allocation approaches officials are exploring, from which they might infer ways to advance their other interests.
41. These conflicts are manageable through the TAG having no decision-making role and officials being responsible for analysing and considering how to apply the TAG's advice, enabling any bias to be discounted. In relation to the second conflict, the TAG will provide advice on a range of options rather than a single option and only Cabinet will make final decisions about narrowing options for eventual public consultation.
42. A further potential conflict of interest was identified that is also manageable. Two proposed TAG members are employed by organisations that provide freshwater science and resource economics services. A conflict would arise if the TAG were to consider the scoping of any such services required as part of policy development. If it arises, this conflict will be managed by officials remaining responsible for any necessary procurement, not discussing the procurement process with the members, requiring all members to adhere to confidentiality requirements, and requiring the affected members to not participate in preparation of any bid by their organisation to provide the services.

Ministers' engagement with Freshwater Iwi Leaders Group, and Joint Advisory Group

43. In 2009 Ministers committed, through the Communication and Information Exchange Protocol between the ILG and the Crown, to engage at the earliest practical stage on the development of advice for Cabinet. To meet the commitments of the Protocol there will be transparent, well-informed discussions between Ministers and the ILG on all freshwater allocation policy before Ministers make recommendations to Cabinet for final decisions.
44. In addition, a joint advisory group (JAG) of Crown advisors and IAG leadership will have the opportunity to consider and comment on the Allocation Team's advice to Ministers. The JAG members will then be well-positioned to advise their principals. However, it is important to note that directions to the Allocation Team will be through lead Ministers and the Allocation Team will provide advice directly to Ministers. In line with the statutory requirements for the State sector to maintain political neutrality and for public servants to tender free and frank

advice to Ministers, the Allocation Team will remain accountable to the relevant departmental chief executives or their delegates.

Wai 2358: National Freshwater and Geothermal Resources Inquiry

45. In its 22 April 2016 direction, the Waitangi Tribunal indicated it will begin its Stage 2 hearings on the first three parts of the process contained in the discussion document in late 2016 and will continue hearings on allocation options after the Crown has developed these with the ILG and consulted on them publicly. The Tribunal indicated that it expects to be able to continue its hearings in 2017, which is approximately 12 months earlier than the proposed work programme currently anticipates public consultation occurring.

The Crown will update the Waitangi Tribunal on the timing and scope of the allocation work programme as soon as possible after Cabinet has made decisions.

Consultation

46. The following departments and agencies have been consulted and their views reflected in this paper: the Ministry of Business, Innovation and Employment, the Department of Internal Affairs, the Office of Treaty Settlements, the Treasury and Te Puni Kōkiri. The Department of the Prime Minister and Cabinet was informed.

Financial implications

47. The work will be funded from within baselines.

Legislative implications

48. This work programme may result in regulatory proposals but, as described in the indicative timing, this would not occur until 2018.

Regulatory impact analysis

49. The regulatory impact analysis requirements do not apply to the establishment of the work programme.

Publicity

50. The public has been informed of our intention to continue work to develop freshwater allocation policy proposals, through publication of our consultation document "Next steps for fresh water" on 20 February 2016.
51. No further media announcements are intended. Key stakeholders will be informed of the work programme and the establishment of the TAG, including the Land and Water Forum and regional councils.

Recommendations

52. The Minister for the Environment and the Minister for Primary Industries recommend that the Committee:
1. note that on 15 February 2016 Cabinet noted that the allocation of water resources remains an area for reform that will need to be progressed in the near future, including how allocation approaches address iwi/hapū rights and interests, and that we are continuing policy development in this area (CAB-16-MIN-0034 refers)
 2. note that the consultation document “Next steps for fresh water” released on 20 February 2016 states that *“further work is required to develop options [for allocation policy]...these will be progressed over the coming months with a technical advisory group”*
 3. agree the Terms of Reference for the Freshwater Allocation Work Programme (Appendix 1)
 4. note the intention of the Minister for the Environment and the Minister for Primary Industries to establish a Water Allocation Technical Advisory Group to provide advice to officials during 2016 and 2017
 5. note the intention of the Minister for the Environment and the Minister for Primary Industries to appoint the following members to the Water Allocation Technical Advisory Group until the end of 2017, with consideration of potential extension or reappointment at that point:
 - 5.1. David Caygill
 - 5.2. Suzie Greenhalgh
 - 5.3. Catherine Harland
 - 5.4. Chris Keenan
 - 5.5. Craige MacKenzie
 - 5.6. Jim Truesdale
 - 5.7. Elizabeth Soal
 - 5.8. Adele Whyte
 - 5.9. Roger Young.

Authorised for lodgement

Hon Dr Nick Smith
Minister for the Environment

Hon Nathan Guy
Minister for Primary Industries