



Comment to the New Zealand Productivity Commission
on the Issues Paper, *Better Urban Planning*.

March 2016

1. Introduction

Water New Zealand is a not-for-profit organisation that promotes and represents water professionals and organisations. It is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies and scientists.

It is this group that this submission refers to as “the water sector”. This sector includes those who:

- set policies rules on water quality and quantity;
- provide the knowledge to allow those policies and rules to be appropriately set, applied and monitored;
- help those parties needing to use water (either for out of stream uses or for its assimilative capacity) to understand and satisfy regulatory requirements;
- provide water-related services to industries and communities. This includes, but is not limited to, those who design, install, maintain and or operate water related infrastructure in the:
 - urban and industrial sectors, across the so-called three waters - being wastewater, stormwater and potable water for domestic and municipal supply; and
 - rural and energy sectors (including hydroelectricity assets and irrigation schemes).

Hence the water sector comprises those with a range of roles and disciplines including regulators, service providers and technical (science and engineering) specialists. It is a diverse group with diverse perspectives of, and interests in, water and water management. However, the issues of relevance and interest to the water sector can generally be grouped around three themes:

1. *Environmental Management* - How the environmental effects of water use (including water abstraction and discharges to water) are managed. This includes a particular focus on whether decision-making processes and compliance monitoring and enforcement are robust and efficient.
2. *Delivery of water services* - How water services (i.e. three waters) are planned, prioritised and coordinated.
3. *Financing water services*– What does the current regulatory environment, and potentially new obligations under RMA mechanisms, mean in terms of the cost requirements for managing, maintain and renewing water services and the related discharges. There is also an issue about how territorial authorities are reporting financial information to the Office of Auditor General and their ratepayers. There seems to be no consistent way of depreciating 3 waters assets, recording or reporting that information to government, thus some national consistency here would greatly improve matters.

2. Environmental management

The management of water is governed by the Resource Management Act 1991 (the RMA). The RMA's approach to managing water is very different to that used in most other jurisdictions. One of the defining characteristics of natural resource management in New Zealand is that all natural resources (land, water, air and coast) are managed under a single statute according to a set of purposes, principles and decision-making processes.

Management of all those resources is largely devolved to local government rather than being a central government responsibility. Various aspects of water management are the responsibility of regional and unitary councils and territorial authorities. Many aspects of land management are territorial authority functions but regional councils can, and do, also control land use for specific purposes including where that is necessary to manage water resources. Hence, separation of land use planning and environmental management is not as clearly distinct as in most other jurisdictions.

In addition, the problem with devolved responsibility is illustrated by Regional Council consents for wastewater discharges, where Regional Council's often set different conditions, even on identical plant types. While receiving environments can be and are different, there is significant scope for a more consistent national approach.

3. Strengths and weaknesses

This regime has both strengths and weaknesses. While the integrated management of land and water is one of the key strengths of the regime, some of the key weaknesses from a water management perspective have been argued as follows.

- Historically, regional plans controlling water have been lacking in specificity about the outcomes required (particularly as a result of relying on flexibly applied national and regional guidelines). Very few hard limits have (until recently) been applied in relation to either water quantity or water quality.
- The above situation has led to an over-reliance on case-by-case assessment. Attempting to demonstrate how adverse effects can be adequately managed is an information-intensive exercise. It also leads to a low level of certainty for those planning, designing and operating water infrastructure.
- Each regional plan is different in both style and substance. There is a lack of consistency in the policies and rules that apply around the country. This is often articulated as a lack central government direction in the form of national policy statements (NPSs) and national environmental standards (NESs).
- Regional councils (and more particularly unitary councils) are “too close” to territorial authorities or are themselves water service providers leading to cross boundary issues that translate to weak environmental regulation and/or enforcement of water infrastructure performance¹.
- Closely related to the above, because the management approach (policy and consenting) is overly community (rather than technically)-driven, there is a perception that many urban and rural water users have been allowed to get away with far too much for far too long.

¹ In its Third Report, the Land and Water Forum noted that members questioned whether territorial local authority wastewater and stormwater breaches are enforced as rigorously as they should be. It further noted the perceptions that:

- a. territorial local authorities regularly receive more lenient consent conditions for their wastewater and stormwater networks than commercial operators with a comparable risk profile
- b. despite the perceived lenience of these consent conditions, regional authorities regularly take a lenient approach to the enforcement of these consents
- c. once their consent have expired, territorial local authorities delay making the investment necessary to bring their wastewater and stormwater systems up to specification.

4. Recent policy and regulatory reform

Central government has been increasingly receptive to these arguments and, over past years has responded with various policy changes aimed at better water management – many aimed at addressing one or more of the issues identified above. These include:

- The *National Environmental Standard for Sources of Human Drinking Water*. This NES aims to reduce the risk of human drinking water sources becoming contaminated by requiring regional councils to ensure that effects of activities on drinking water sources are considered in decisions on resource consents and regional plans². It came into effect on 20 June 2008.
- Legislative amendment in 2009 that provided the national Environmental Protection Authority (EPA) with the added function of receiving resource consent applications and making recommendations to the Minister about whether a proposal is a matter of national significance and that should be referred to a board of inquiry or the Environment Court for a decision³. This was designed as a means of taking highly complex and controversial decisions out of the hands of local and regional decision-makers⁴.
- The *Resource Management (Measurement and Reporting of Water Takes) Regulations 2010*. These regulations require most water abstractions to be measured and reported by 2016 (larger takes had to be measured and reported by 2012). This responded to the lack of measurement and reporting (prior to the Regulations only a third of the total volume of water allocated by resource consent was subject to active measurement).
- Replacement of Environment Canterbury regional councillors with commissioners and enactment of the *Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010*. This gave statutory weight to the Canterbury water management strategy (CWMS) and created a process to develop and confirm new regional water plans more expeditiously and with a greater degree of independence than might have applied otherwise.
- The establishment of the *Land and Water Forum* (LaWF). LaWF was a multi-party collaborative process set up to reach agreement on the best way forward for the management of land and water across New Zealand. It has produced four reports and a multiplicity of recommendations.
- The *National Policy Statement for Freshwater Management 2014*. This added to the 2011 version by including a “national objectives framework” which sets out a menu of possible water quality (numeric) objectives/limits for some key water quality attributes and “national bottom lines”. It also requires regions to institute water accounting.

² Note these incorporate the 2005 Ministry of Health Drinking Water standards.

³ Even if a proposal is not lodged with the EPA the Minister may, on request, refer a proposal to a Board of Inquiry or Environment Court.

⁴ Since this change has been introduced, one significant water project (the Tukituki catchment irrigation scheme) has been declared nationally significant and referred to a Board of Inquiry.

The numerical limits of the national objectives framework (NOF) include a range of national bottom lines below which a regional council cannot set a freshwater objective. The framework also includes two compulsory national values that must be provided for everywhere – ‘ecosystem health’ and ‘human health for recreation’.

Some of the attributes, (notably E.coli with a national bottom line of 1000 E.coli/100mL) are significantly exceeded in many urban environments due to the influence of contaminated stormwater inflows. Imposing, and achieving, those limits within established urban environments is likely to involve significant cost.

The approach of the national objectives framework as contained within the NPS-FM is to require the setting of freshwater objectives to apply at all points on a river, stream or lake (although in practice whether the objectives are being met will only be tested at specific monitoring sites). While this provides clarity and transparency as to the outcome required in-stream, where those numeric objectives are not already met the approach will require consideration of the standard of discharge that will be required in an individual consenting context. That will presumably need to continue to be assessed on a case-by-case, effects basis.

The issue of whether the NPS freshwater outcome should be met at the point of discharge or after reasonable mixing will be resolved through the freshwater accounting system that will include identifying sources of relevant contaminants and the amount of each contaminant attributable to each source.

Similarly, where a water body is in a state of over-allocation and (for example) a wastewater plant requires a replacement consent, the accounting system will give clarity in terms of the standard of discharge required.

While recent government initiatives have responded to some extent to a number of issues of concern to the water sector, it is pertinent to note that many wastewater and stormwater discharges occur to coastal water. The NPS-FM now requires regional plans to take an integrated approach between fresh water and coastal waters and specifically requires protection of wetlands. Discharges also remain subject to the more general New Zealand Coastal Policy Statement (NZCPS).

5. Will a single plan help?

In some respects a proposal for all RMA plans to be combined into a single plan is contrary the direction some would argue ought to be taken.

The essential issues associated with most land use control relate to amenity protection and the avoidance of property on property effects (or other strategic implications such as traffic/transport). These are very different in nature to decisions made about the impacts of resource use on natural systems - water quality for example.

Although water projects will typically require both land use and water use consents the vast majority of land use consents have no direct relationship to water and are not associated with a water permit. Combining these two types of regulation into a single plan risks further importing land use planning philosophies to water use management – eroding the science-centric focus that should dominate water management.

Moreover, plans – both district and regional - are already often lengthy and complex. Putting these two fields of regulatory endeavour together risks creating even greater complexity for no substantive benefit.

6. Planning and delivery of water services

The planning and delivery of water services by local authorities is governed under the Local Government Act 2002 (LGA).

The purpose of local government is given in section 10 of the LGA as (amongst other things) meeting, “*the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.*”

“Good quality”, in relation to local infrastructure, local public services, and performance of regulatory functions, is defined in the LGA to mean:

“infrastructure, services, and performance that are—

- (a) efficient; and*
- (b) effective; and*
- (c) appropriate to present and anticipated future circumstances”.*

Section 11A of the LGA states that in performing its role, a local authority must have particular regard to the contribution that core services make to its communities. One of those core services is network infrastructure⁵.

Specific obligations relating to the provision of water services are imposed by:

- Part 6 of the LGA and its obligations on councils to:
 - plan all investment through the Long Term Plan (LTP) and annual plan process and only make decisions to significantly alter the level of service for a significant activity if it is provided for in the LTP.
 - Introduced in 2014 was a requirement to prepare an *infrastructure strategy* for a 30 year planning horizon (s101B).
- Part 7 of the LGA which requires councils to assess (“from time to time”) the adequacy of water and other sanitary services in light of:
 - a. health risks to communities arising from any absence of, or deficiency in, water or other sanitary services; and
 - b. the quality of services currently available to communities within the district; and
 - c. the current and estimated future demands for such services; and
 - d. the extent to which drinking water provided by water supply services meets applicable regulatory standards; and
 - e. the actual or potential consequences of stormwater and sewage discharges within the district.

⁵ Defined to be “*the provision of roads and other transport, water, wastewater, and stormwater collection and management*”.

7. Issues associated with planning for water services

The LGA aims to ensure that councils plan for, and deliver in a timely and efficient manner, water (and other infrastructure) services to meet demand and protect public health.

Recent changes to the Act to require infrastructure strategies may have overcome the previous weaknesses in the investment planning regime to the extent that there is now a much clearer directive for councils to engage in long-term planning for water services taking into account a broad range of factors, including the need to maintain or improve environmental outcomes and improve resilience of assets and service in the face of risk of natural hazards.

While it requires councils to engage in long term planning, it does not necessarily require them to actually implement the plan. Is there a need for some form of national direction where councils are required to account specifically for the costs of delivery of 3 waters services and then to identify how they intend to fund and execute the implementation?

Secondly, would some form of prescription in terms of council developed asset management plans be useful? This could take the form of a mandated template which councils are required to use.

The key issue is whether such changes really go far enough. Councils retain full discretion (subject to consultative requirements) under the Act to fund or not fund water services projects. Although there is a link to meeting applicable drinking water (health) standards, there is no statutory link to compliance with the RMA or the legal obligation to comply with conditions of any resource consents to meet environmental standards. Indeed the obligation now included to consider maintaining environmental outcomes when planning the extent and timing of water services, arguably invites a council to reach a different view about the acceptability of any environmental effects than that dictated by resource consents held – and invest or not invest on that basis.

In other words, the LGA creates a regime that requires councils to plan for investment in water services but does not expressly require them to invest where necessary to ensure that remain in compliance with requirements imposed under the RMA. This continues to allow necessary investment in water services to be traded away for other priorities through budgeting processes.

8. Financing water services

As noted above, recent mechanisms introduced under the RMA such as the NPS-FM may involve extra costs. It is difficult to quantify these at this stage but the intent of the NOF to minimize contaminant loads will undoubtedly have significant consequences in reference to wastewater discharges and stormwater loads. To date, limited consideration has been given to the quantum of those costs, but they will inevitably fall on ratepayers.

Another matter having financial implications involves resource consents and their renewal. There have been recent cases where previously long term consents have, on renewal been reduced to ten year terms. This brings added operational, administrative and legal costs to all consent holders but has particular implications for the smaller TLAs.

The question of water services and increasing costs was highlighted last year in the Local Government New Zealand Funding Review. These increasing costs are in part related to legislative compliance and in part a consequence of the challenges around aging infrastructure (particularly reticulation).

The funding review suggested two possible solutions specifically targeted at water services provision:

- a co-funding model, similar to that applying to roading; and
- moving to 'regionalisation' of water services under a 'public utility' model (i.e. CCOs).

The recent announcements from the Minister for the Environment regarding RMA reform seek, in part, to minimize costs relating to the operation of the legislation. While highlighting matters such as urban infrastructure, resilience and the introduction of standard planning templates can be welcomed, it remains unclear how far these will go to reducing the costs for water services provision.

9. Conclusion

Even with the best will to date in improving the legislative framework, the example of water services demonstrates a continuing maze of planning issues, environmental obligations and differing responsibilities that does not result in adequate transparency or, more importantly, equity. In most other jurisdictions there is a clear set of environmental and health standards that must be adhered to when delivering water services. This is quite separate from the planning regime covering land-use and the installation of infrastructure to allow the supply of the water services.

This inquiry into improving urban planning would be an appropriate time to consider a fundamental change to the legislative frameworks. A clear set of planning requirements and a clear but separate set of environmental and health standards along with defined responsibilities will be necessary if we are to adequately confront the challenges presented by demographic change, public expectations, and new technologies.

A new approach to both environmental and health standards and urban planning and development could, in reference to water services provision, include:

- a prescribed template for asset management plans;
- consistent recording of data by councils to a prescribed template mandated by central government;
- consistent means of renewals planning;
- consistent and transparent means of reporting financial information about 3 waters assets;
- consistently applied environmental and health standards; and
- defined and consistent responsibilities and obligations applicable to service provision.