

Natural and Built Environment Bill Reform Series: Water

Changes to water under the NBE

The Natural and Built Environment Bill (**NBE Bill**) sets out to achieve objectives relating to the sustainability, equity and efficiency of use of water. This is proposed to be achieved by the setting of environmental limits and targets and the recognition of the amenity values of Aotearoa's water. Decision makers will be required to provide for 'system outcomes', including the protection, or if degraded, restoration of the ecological integrity, mana, and mauri of water. They will also be required to recognise and make provision for the relationship of iwi and hapū and the exercise of their kawa, tikanga (including kaitiakitanga), and mātauranga with regard to water.

The Minister for the Environment (**Minister**) will be required to set environmental limits for freshwater, the purpose of this being to prevent the ecological integrity of the natural environment from further degradation. Limits may be set directly by the National Policy Framework (**NPF**) or the NPF may require these limits to be set by NBE plans. NBE plans will be the enabling framework for allocating resources, with specific provisions for freshwater in NBE plans. The principles of sustainability, equity and efficiency will guide the development of allocation methods in the NBE plans for freshwater resources.

In summary:

- The purpose of Water Conservation Orders (WCOs) remains to recognise and sustain the outstanding amenity or intrinsic values of waters in their natural state, as well as waters that are not in a natural state but are still considered outstanding. The process for applying for one will be similar to the existing process under the Resource Management Act 1991 (RMA), although they will be more important under the NBE.

The NBE Bill states that any relevant WCO must be "taken into account" when considering any application for resource consent, and consent must not be granted if it would be inconsistent with a WCO.

- A Freshwater Working Group (FWG) will be established. It will be tasked with producing a report for the Minister, making recommendations regarding both freshwater allocation and a process for engagement between the Crown and iwi and hapū relating to freshwater allocation. Ultimately, allocation statements may be developed and agreed over geographic areas, most likely at regional, catchment, or sub-catchment levels. NBE plans will be required to be updated to remain consistent with any relevant allocation statements.
- Existing rights or interests in freshwater will be preserved. The NBE Bill will not create or transfer any right or proprietary interest in freshwater, nor will it extinguish or determine any customary right or interest.
- The maximum length of a resource consent relating to water will be 10 years. Exceptions will apply for very large-scale hydro power schemes and matters relating to the national infrastructure grid.
- It is likely that many matters relating to water, especially those on a larger scale, will be deemed matters of "sufficient significance" under both the NBE and the Spatial Planning Bill. Each region's Regional Spatial Strategy will be required to provide strategic direction on any qualifying matters.
- Some, but not all water bodies could qualify as "significant biodiversity areas", and therefore be subject to the effects

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management hierarchy. Other matters will be subject to the effects management hierarchy if specified in the NPF. The criteria for significant biodiversity areas will be set in the NPF.

- Plans must identify each location in the region that is a "place of national importance". Rules must not allow for activities that would have a "more than trivial" adverse effect on these places of national importance. Additionally, before any activity can commence the council must determine whether the area includes an area of significant biodiversity.
- Qualifying farms must operate in accordance with a certified farm plan, that specifies the clear and measurable requirements to avoid remedy or mitigate effects on water. A farm qualifies if it contains over 5 hectares of horticultural land use, over 20 hectares of arable land use or pastoral land use, or over 20 hectares of a combination of the three. Specified instruments such as provisions of the NPF, rules in a plan, WCOs, and resource consents prevail over a farm plan.
- Monitoring of the sale of nitrogenous fertiliser will be required by the NBE Bill. Fairly intensive monitoring is proposed, including reporting of volume sold, where it is to be used, and the names of seller and purchaser.

General themes from submissions include:

- Concern surrounding the limits and targets framework in the NBE Bill. Submitters advocate for significant improvements with some submitters stating the limits should be set at a minimum state that the environment can function healthily and not the current

environmental state which in some cases can be degraded.

- Submitters consider there should be no exemptions from the requirement to meet limits in the framework and recommend clearer provisions in the NBE Bill that offsetting and compensation are not available.
- Submitters consider the system outcomes need to provide for the protection of the habitat of trout and salmon and reflect the policy in the National Policy Statement for Freshwater Management (NPS-FM).
- Submitters recommend inclusion of the concept of ecosystem health at the centre of the NBE Bill instead of ecological integrity. Submitters consider the definition of ecological integrity focuses on the protection of indigenous species only and does not account for the highly valued introduced species.
- Submitters recommend clear prioritisation of the limits and targets framework to provide for ecosystem health.
- Submitters express concern that comparatively to the NPS-FM protections the NBE Bill provisions are a step backwards.
- Submitters are concerned that environmental exceptions available to environmental protections in the NBE Bill result in too much discretion.

Want to know more?

Please contact a member of our [Environments, Planning and Natural Resources Team](#) if you would like to know more.