Whakatāne District Council

Submission on

Government’s Action for Healthy Waterways

31st October 2019
Introduction

Whakatāne District Council (WDC) appreciates the opportunity to provide a submission on the Government’s Action for Healthy Waterways proposal. WDC has participated in and supports the Bay of Plenty Regional Council (BOPRC)-led joint submission on behalf of contributing local authorities in the region. In addition to the joint submission, WDC is providing this submission to focus on matters of particular importance and potential effects within the Whakatāne District that have not already been addressed within the BOPRC-led Joint Submission.

This submission provides commentary on the following aspects of the Action for Healthy Waterways proposal:

- Draft National Policy Statement for Freshwater Management 2019;
- Proposed National Environmental Standards for Freshwater 2019; and
- Action for Healthy Waterways – a discussion document on national direction for our essential freshwater.

WDC is not providing additional commentary on the Draft Stock Exclusion s360 report as this will not materially affect the functioning of WDC operations.

Whakatāne District Context

The Whakatāne District in the Eastern Bay of Plenty has a rich history, a strong cultural identity and beautiful natural landscapes. Extending from Ōtamarākau and Matatā in the west to Ōhiwa Harbour in the east, and inland to take in communities including Murupara, Minginui and Ruatāhuna, our District is a place of great diversity.

The Whakatāne District has a total population of 34,610, with around 23,630 residents residing in urban areas (2018). Approximately 66.3 % of the population identify as New Zealand European, 43.5 % Māori, 2.5 % Pacific, and 2.5 % Asian. The Whakatāne District is home to a number of iwi and hapū, including Ngāti Awa, Ngāti Manawa, Ngāti Rangitahi, Ngāi Tūhoe, Ngāti Tūwharetoa, and Ngāti Whare. There are four existing statutory acknowledgements within the Whakatāne District (Ngāti Awa, Ngāti Manawa, Ngāti Tūwharetoa, and Ngāti Whare). All policy and decision making associated with these areas must take into account the content of the statutory acknowledgements.

The Whakatāne District has an abundance of natural and productive landscapes. Te Urewera and Whirinaki Te Pua-a-Tāne in the south form part of the largest remaining indigenous forest tract left in the North Island and are home to a rich array of flora and fauna, providing opportunities for tramping, mountain biking, hunting and outdoor adventures. A number of our rivers and streams traverse the landscape from these untouched rugged terrains before crossing the productive plains and urban areas to discharge into the Pacific Ocean. Fertile and highly productive farming areas include the lowland
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Rangitāiki Plains, bordering the coast, and inland, the Galatea basin. Alongside agriculture and horticulture, large parts of Whakatāne District are covered by commercial plantation forest.

The Long Term Plan (2018-2028) outlines Key Priorities to guide the expenditure by WDC across projects and initiatives to achieve positive community and environmental outcomes. The Key Priorities that relate to the water flowing through our District include:

- Upgrading wastewater treatment systems for Whakatāne, Edgecumbe, Tāneatua and Murupara as the existing consents all expire by 2026;
- Finding an alternative water supply for Whakatāne and Ōhope to provide resilience for municipal supply – the quality of the water supply can be affected by high turbidity and saltwater intrusion;
- Making sure water is safe to drink through water safety-related projects across WDC schemes; and
- Coordinating a response to climate change and natural hazards as the Whakatāne District is identified as being very vulnerable to natural hazards that can be exacerbated through climate change.

WDC has been an active participant in BOPRCs implementation of the existing National Policy Statement for Freshwater Management (2017), particularly though the Regional Natural Resources Plan Change 9: Region Wide Water Quantity, and through the Rangataiki Water Management Areas that are anticipated to future plan changes.

**Whakatāne District Council supports the Freshwater Reform**

As represented through our support of the BOPRC-led Joint Submission, WDC supports the Government’s mission to halt and ultimately reverse degrading water quality trends and protect freshwater resources against unhealthy processes. However, WDC believe greater clarification and some amendments are required in order to quantify the potential effects on both WDC obligations and operations, and the community’s health and wellbeing. The remainder of this submission outlines the key concerns and amendments WDC wish to see.
Key Concerns and amendments sought

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

**Te Mana o Te Wai**

**Issue**

WDC is supportive of the concept of Te Mana o Te Wai and the hierarchy of obligations outlined in section 1.5 and 2.1 of the NPS-FM. However, the relationship of the hierarchy of obligations with Part 2 of the Resource Management Act 1991 (RMA) is not clear. Particularly, the requirement to give effect to Te Mana o Te Wai as part of a National Policy Statement could be interpreted as being inconsistent with Part 2 of the RMA and therefore unlawful and unable to be implemented within lower order legislative documents. Alternatively, the hierarchy of obligations may be required to be implemented, regardless of the directive from Part 2, despite a clear hierarchy not existing within s5 of the RMA, nor a directive to protect environmental resources regardless of all other considerations (social, economic and cultural). Given existing case law regarding reliance on Part 2 of the RMA (e.g. King Salmon), the directive of the hierarchy of obligations may be given greater credence than higher order legislation (i.e. RMA) if the NPS-FM is considered to give effect to the RMA.

The concept of Te Mana o Te Wai is not well-defined and little interpretation or guidance is provided. WDC has concerns the hierarchy of obligations set out by Te Mana o Te Wai will apply in all circumstances regardless of the risk to human life and health. The hierarchy of obligations as set out means that WDC will be unable to provide for activities, or it will restrict activities they have control over if this means there could be negative effects on freshwater. WDC provides essential services to the community, including wastewater management and municipal freshwater supply. The hierarchy of obligations may restrict the ability of WDC to continue providing these services in perpetuity, such as in times of environmental stress or change.

It is not clear what the relationship between Te Mana o Te Wai and emergency works (s330 of the RMA) is.

It is not clear what will constitute ‘essential health needs of people’.

**Whakatāne District Examples**

WDC holds resource consent to take surface water from the Whakatāne River for the purposes of municipal supply to the Whakatāne urban area. Under Te Mana o Te Wai, in drought conditions, WDC may be unable to provide a consistently adequate water supply to the Whakatāne township if the water level of the river drops below minimum levels required to be specified through the Regional Plan (as part
of implementing the NPS-FM). This will be due to not fitting the requirements of emergency works to undertake activities contrary to sections 9, 12-15 of the RMA, and being contrary to Te Mana o Te Wai.

Relief Sought

- Clarification on the hierarchy of obligations under the NPS-FM and its consistency with Part 2 of the RMA;
- Clarification of the relationship of the hierarchy of obligations in relation to providing for the essential health needs of communities in circumstances where there is a risk to human life and health. WDC supports further definition of ‘essential health needs’ and affording these with a status that will not be compromised by Te Mana o Te Wai (such as being elevated to the same tier of ‘health and wellbeing of water’ within the hierarchy of obligations). Essential health needs are considered by WDC to include those infrastructure provision services that communities are dependent on to avoid risk to human life and health, such as providing potable water consistently to communities;
- Clarification of the consequences of not being consistent with Te Mana o Te Wai in specific circumstances where consistency will result in unacceptable risk to human life and health. WDC seeks confirmation that unacceptable risk to human life and health will not be compromised by Te Mana o Te Wai;
- Greater interpretation and guidance at a national level on how to give effect to Te Mana o Te Wai and the hierarchy of obligations; and
- Clarify how the objectives and policies can be given effect to within district plans in relation to territorial authority infrastructure provision requirements and provisions for urban growth.

 Maintain and enhance all streams

Issue

The NPS-FM will require no ‘net loss’ to occur with regard to the extent or ecosystem health of a stream. Further s3.16 of the NPS-FM will require that "...the extent and ecosystem health of rivers and streams in the region, and their associated freshwater ecosystems, are at least maintained". However, ‘net loss’ and the scale to which it applies is not well defined. Further Policy 2 within s2.2 of the NPS-FM will require that “the health and wellbeing of waterbodies and freshwater ecosystems is maintained or improved”.

The result of these policies are twofold:

- Existing water quality baselines become the hard bottom-line, regardless of the bottom lines established through changes to a regional plan and outlined in the NPS-FM. This will have an effect on activities consented but not yet given effect to (such as discharges and water takes), in addition to inflexibility to changes to activities that would result in an overall improvement in water health
and quality at the expense of some discrete negative impacts to the bottom line in specific locations.

- The avoidance of net loss is not spatially well defined and it is uncertain if this will apply to individual sites that are monitored or over a Freshwater Management Unit (FMU). Territorial Authorities may be reluctant to diversify existing activities such as wastewater discharges or water takes that may result in improved environmental outcomes if no net loss is acceptable in all locations. Further, a requirement to maintain and enhance at all monitored points will remove offsetting ability and runs the risk of removing the focus from priority streams (ecological of contact values) in order to provide a generic level of maintenance across a number of waterbodies, regardless of associated values.

**Whakatāne District Examples**

WDC is responsible for a number of wastewater discharges to surface water. WDC is in the process of exploring alternative options for treating and discharging wastewater, including to land. For a number of smaller communities, the cost of providing the required infrastructure can be cost prohibitive. Options also include reducing the contaminant discharge from singular water bodies (streams and also still water) to dispersing the discharge across a number of flowing water bodies. This would reduce the concentration of the discharge and increase the ecological health and contact values of the waterbody currently accepting the discharge. The requirement to maintain and enhance all waterbodies, even those above the baselines will prohibit this dispersion from occurring, despite the overall health of the waterbodies in proximity to the discharge increasing.

WDC is also seeking to consolidate wastewater infrastructure through a centralised system in order to improve public health and environmental outcomes for smaller communities within the Whakatāne District (such as Matatā). However, in the context of ‘maintain or improve’ it may be difficult to prove there is no net loss in the discharge point, compared to a poorer performing (as current) decentralized system.

**Relief Sought**

- Define the area to which the avoidance of ‘net loss’ and maintain and enhance apply to. Have the area be representative of an FMU or a sub-catchment rather than applying to individual monitoring points.

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**National Environment Standard for Freshwater (NES-F)**

**Culverts**

**Issue**
WDC acknowledge that the permitted activity performance standards for culverts in the NES-FM are generally reflective of the NIWA New Zealand Fish Passage Guidelines 2018. Fish passage should be provided in all culverts where fish passage would be present if the culvert were not present, but implementing all aspects of Regulation 21 comes at a significant financial cost due to increasing the size of culverts to accommodate the width and depth buried requirements. The impact on cost increase due to increasing the culvert capacity to meet the diameter percentage buried, will become excessive for large culverts and does not account for box culverts. Increasing a culverts size, exponentially increases the cost due to a number of factors such as materials, plant, excavation, limited contractor capability etc. The percentage of diameter does not seem to align directly to the bed depth required either, as the diameter is calculated from capacity requirement, and also does not indicate a buried depth required for a box culvert. We believe a better requirement would be a minimum lineal depth.

Natural fish passage emulation for some rivers can be achieved without providing the suite of requirements in Regulation 21. WDC is concerned the performance standards with Regulation 21 of the NPS-FM can be unnecessarily burdensome and costly on Territorial Authorities, and are disproportionate to the environmental effects being managed.

Relief Sought

- Change Regulation 21 (Permitted activity) as follows:
  
  a) the culvert complies with all relevant rules in the relevant regional plan;
  b) the culvert provides for the same fish passage as exists naturally in the area of river bed it occupies;
  c) the mean cross-sectional water velocity in the culvert is equal to or less than the mean crosssectional water velocity found in immediately adjoining stream reaches; and
  d) the culvert span is:
    
    i. equal to or greater than 1.3 x stream bankfull width for streams with a bankfull width ≤3 m; or
    ii. equal to or greater than 1.2 x stream bankfull width + 0.6 m for streams with a bankfull width >3 m;
  
  e) the culvert is an open bottom culvert or the culvert invert is placed so that a minimum of 25% of the diameter of the culvert is below the level of the river bed;
  f) the stream bed substrate is present over the full length of the culvert, and it is stable for at least four fifths of the time;
  g) the culvert provides for continuity of geomorphic processes (such as the movement of sediment and debris);
  h) the person constructing the culvert must provide the following to the relevant regional council within 20 working days of construction being completed:
    
    i. the standard fish passage structure information;
information on at least the type or shape of culvert (e.g. pipe, box, arch), material, height, width, length, drop height, slope, culvert substrate, and alignment.

- Revise Regulation 21 to include an advice note referencing the NIWA New Zealand Fish Passage Guidelines 2018 as best practice.

**Wetlands**

**Issue**

WDC supports the delineation between constructed wetland and natural wetland. However, the regulations are viewed as onerous and may hinder the restoration of wetlands by cascading to a discretionary activity resource consent status for any works proposed. Further, constructed wetlands can be for ecological purposes; over time, these wetlands can be more representative of a natural wetland, but would not be afforded the same protections as natural wetland.

**Relief sought**

- Enabling provisions (permitted activity for restoration purposes only) to encourage the restoration of natural wetlands within a range of specified criteria rather than the current discretionary activity proposal.
- Allow for constructed wetlands to be afforded the same protections as natural wetlands if their purpose is solely for ecological restoration and is specifically requested by the applicant.

**Infilling of streams**

**Issue**

WDC supports the need for a discretionary activity resource consent (as a minimum) for the infilling the bed of a river being. However, it is not clear what constitutes ‘infilling’ and could include bank modification or as part of installing a culvert. There is a risk that any stream works that includes an element of disturbance either within or adjacent to a river or stream will be encompassed by this rule.

**Relief sought**

- Clarification on the definition of ‘infilling’ and the extent of application.

**Irrigation – effluent**

**Issue**
Regulation 34(2) of the NES-F requires resource consent as a discretionary for an increase in the amount of land used on a farm for irrigated production.

**Whakatāne District Examples**

WDC has existing discharge consents for wastewater to land and is looking to increase wastewater discharges to land as alternatives to discharging to waterbodies. Regulation 34(1) and 34(2) may inadvertently capture municipal wastewater discharges should the area of irrigation increase by 10 ha or more.

**Relief Sought**

Specific exemption of municipal wastewater discharges from Regulation 34(2), or clarification that effluent irrigation as specified in Regulation 34(2) includes municipal wastewater discharges (and is therefore exempt).

**Flapgates**

**Issue**

Construction of a passive flapgate will be a non-complying activity under the NES-F pursuant to Regulation 23.

**Whakatāne District example**

WDC is responsible for a number of pump stations that discharge stormwater into waterbodies that utilise passive flap gates. The passive flap gates that connect to the Whakatāne River are designed as fish-friendly flap gates, while a number of other passive flap gates sit far above the relative water level of the receiving waterbody. These flapgates are to allow for the conveyance of stormwater from rural and urban drainage networks. The latter discharge to the rivers only in times of rain events when fish passage would not be achievable upstream due to water velocities. At all other times, the passive flap gates and discharge points would be hydrologically disconnected from the waterbody in which fish may reside.

Replacement of the passive flapgates that exist within the Whakatāne stormwater network would result in the requirement for resource consent and further investigation for no benefit to fish passage.

**Relief Sought**

- Clarification as to where Regulation 23 applies; requested that artificial stormwater networks are exempt from this regulation, where fish passage is not desirable.
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*Action for Healthy Waterways – a discussion document on national direction for our essential freshwater*

**Signals on other reforms.**

**Issue**

WDC generally supports greater certainty for consenting discharges from wastewater treatment plants under a National Environmental Stands for Wastewater Discharges and Overflows (NES Wastewater), however such certainty needs to be appropriately embedded within the planning framework. For example, section 104 of the RMA provides a range of matters to which regard must be had. While this includes national environmental standards (s104 b(i)), it also includes, amongst other matters, the relevant provisions of national policy statements (s104 b(iii)), regional policy statements (s104 b(v)) and plans or proposed plans (s104 b (vi)). Should the relationship between the NES Wastewater and the rest of the planning framework not be clearly articulated, its introduction may create the perverse outcome of less certainty, not more, in the consenting of discharges from wastewater treatment plans.

**Concluding Comment**

In conclusion, WDC appreciates the opportunity to provide this submission. We trust the matters outlined in this document provide sufficient clarity regarding our submission points. WDC has also participated in and supports the joint submission led by BOPRC.