

# Consent terms and activity status

*Activity status and consent term should reflect certainty and impact!*

## Our NSP-FM position in a nutshell

Freshwater bodies and ecosystems must be protected indefinitely. You also have a responsibility to provide opportunities for future generations to access and enjoy healthy freshwater. Where there is any uncertainty around use and managing water, resource consent terms should be a maximum of 10 years. If an activity would lead to over allocation, breach minimum flows, or exceed a target attribute state, that activity should be prohibited.

## The NPS-FM directive

Section 5(a) of the RMA requires you to sustain the potential of water to meet the reasonably foreseeable needs of future generations.

Section 70(1)(g) of the RMA directs that a rule in a regional plan cannot permit any activity if it may result in any significant adverse effects on aquatic life<sup>1</sup>. Section 107 also restricts granting a resource consent in these circumstances.

The principles of Te Mana o te Wai (NPS-FM 1.3(4)) require you to manage resources for the benefit of present and future generations.

The third priority in the objective of the NPS-FM requires you to consider the needs of people and communities, now and in the future.

Limits in the NPS-FM will become rules in your regional plan and a limit in the NPS-FM context, is either a limit on a resource use (including discharge or land use activities), or a water take limit<sup>2</sup>.

The NPS-FM directs you to identify and set limits that achieve target attribute states<sup>3</sup> and environmental flows and levels<sup>4</sup>. Policy 11<sup>5</sup> states that over-allocation<sup>6</sup> must be phased out and avoided in the future. Over-allocation is when a limit is exceeded, or an environmental flow or level is breached<sup>7</sup>. That means you cannot permit activities or grant resource consents that would lead to a target attribute state being exceeded or to an environmental flow being breached.

The National Environmental Standard for Freshwater (NES-F) sets a minimum activity status and conditions for some activities affecting freshwater. The NES-F provides for regional plans

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<sup>1</sup> Link to: Section 70(1)(g) of the RMA 1991

<sup>2</sup> Link to: definition of Limit in NPS-FM.

<sup>3</sup> Link to: clause 3.12 of the NPS-FM

<sup>4</sup> Link to clause 3.17 of the NPS-FM

<sup>5</sup> Link to: Policy 11 of the NPS-FM.

<sup>6</sup> Link to: definition of over-allocation in the NPS-FM.

<sup>7</sup> Link to: definition of over-allocation in the NPS-FM.

and resource consents to be more stringent than the NES-F if that is justifiable in the circumstances of the region<sup>8</sup>.

## What do we want to see?

Consent terms for land use that affects water quality, discharges to land and water, and water takes should be no more than 10 years – and in some cases no more than 5 years:

- when there is uncertainty around the impact on the environment, species, or people;
- where the regional plan has been unable to clearly implement the NPS-FM and give effect to Te Mana o te Wai, whether this is due to timeframes, capacity issues, or other limiting factors;
- where there is not a robust allocation framework in place; or
- to synchronise the expiry date of consents across a catchment so future consent decisions can consider the impact of all proposed activities in a catchment at the same time (common expiry dates).

Communities should have the opportunity to re-allocate or decline access to resources when a robust allocation framework has been developed. Long term consents should not be granted if they will restrict new and more robust allocation frameworks from being developed and implemented.

The activity status of an activity in your regional plan should reflect:

- **The risk of the activity to the environment.** Activities that individually or cumulatively would cause a significant adverse effect on aquatic life must not be permitted; this is restricted by s70(1)(g) of the RMA<sup>9</sup>. A controlled activity status is also unlikely to be appropriate in these circumstances because it does not give the opportunity to decline the consent if significant adverse effects are occurring.
- **The allocation status of the water.** If a waterbody is at or near full allocation, additional activities should not be permitted. Permitted takes or discharges activities could allow water to become over-allocated, which Policy 11 of the NPS-FM does not allow. Where water is at or near full allocation, discretionary and non-complying activity status should be used so the council can carefully consider each application, and decline consents when full allocation is reached.
- **The level of certainty about effects.** Where there is any uncertainty about the effects of an activity on the values of waterbodies, or whether those effects can be appropriately managed, permitted, or controlled activities are not appropriate. The council needs to retain discretion to enquire into whether or not the activity is appropriate, and what appropriate conditions of consent to manage effects would be. Limited discretionary

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<sup>8</sup> NES-F Regulation 6, RMA section 43B(1) and 32(4)

<sup>9</sup> Link to: s70(1)(g) of the RMA

activities unless carefully worded may not be broad enough to enable this assessment, and discretionary or non-complying is more appropriate.

Activities should be prohibited when:

- the activities, individually or cumulatively have a significant adverse effect on the health and wellbeing of waterbodies and ecosystem health;
- they would breach a limit, an environmental flow or level, or breach a target attribute state;
- when an NES prescribes prohibited activity status, or that resource consent cannot be granted in particular circumstances.

Common expiry dates for activities support a co-ordinated approach that allows you to consider cumulative adverse effects in a catchment. Considering a variety of catchment activity effects, one-by-one, and at different times does not give you a sound picture of how the activities and issues interact at a catchment scale. Your plan should include policy to apply common expiry dates to all resource consents affecting water, to enable you to make better decisions for freshwater quality and ecosystem health in the future.

Review conditions should not be used in lieu of appropriate consent terms. Review conditions and consent term are not equal mechanisms. A condition to review consent conditions in the future cannot prevent the consent from being implemented for its intended purpose or duration. Instead, if fundamental aspects of the activity may need to be reconsidered in future, this is best addressed by granting an appropriately shorter consent term for that context.

## **How should the NPS-FM be implemented?**

### **Include strong freshwater policies that limit consent term**

You should include strong directive policies or rules in your plan that ensure consents are granted for no longer than 10 years, and that consent expiry dates are aligned to allow an assessment of cumulative effects when consents expire.

### **Ensure activity status reflects the status of and risk to the water**

Permitted and controlled activities should only be used where there is certainty about the impact and appropriate management of activities, and only in areas that are not nearing full allocation.

### **Ensure future generations have access to freshwater resources**

Ecosystem health and other compulsory values, and the ability of the community to provide for their well-being, must be sustained and held for future generations' needs.

You do not need to determine what the future generations specific needs are, but it is the responsibility of this generation to ensure that future generations have options on how they use

and manage freshwater resources, that they have quality resources, and that they have an equitable right to access the resources that we have today<sup>10</sup>.

Decisions on resource consents today must not impact on the ability of future generations to access or use a resource. The status of activities in regional plans and the term of consents must ensure future generations have equitable access to the same or better options and opportunities to use, experience and co-exist with quality freshwater bodies and ecosystems. This means shorter rather than longer consent terms to ensure any impacts aren't 'locked in' for a long term and allowed to degrade a resource. It also means that you need to take a precautionary approach to activity statuses to ensure appropriate tests are applied to ensure resources will be used in ways that are sustainable.

## **How we know the NPS-FM is being achieved**

Resource consents will be granted for shorter timeframes where there is uncertainty in the ability to appropriately manage your freshwater resources. You will also apply common expiry dates to enable consideration of cumulative effects and to enable implementation of future allocation frameworks. This is especially critical if the quality of your plan development has been constrained.

Any activity with the potential to have a significant adverse effect on freshwater will have a stricter activity status to ensure it can be assessed thoroughly before a consent is granted.

Any activity that will result in over-allocated water or breach a target attribute state will be prohibited.

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<sup>10</sup> Perception Planning Ltd. (2017). Making GREAT Freshwater Policy and Decision Making for Future Generations. Prepared for: International Rivers Symposium, Brisbane.

## Implementation Toolbox

The toolbox will continue to be developed as new information becomes available:

<b>Tools:</b>	are helpful diagrams, processes, or ways to support how you should implement the NPS-FM.
<b>Examples:</b>	provide text suggestions to help draft objectives (values and environmental outcomes), policies, and rules (limits) in your regional plans, including how monitoring could be achieved. It includes examples of how attributes and base line states, target attribute states, environmental flows and levels, and other criteria, where appropriate, can be written or presented to help achieve environmental outcomes.
<b>Case studies:</b>	illustrate where the NPS-FM has been well applied (or not) throughout the country and provides national or international lessons to help implement the NPS-FM.
<b>Evidence:</b>	provides relevant case law to support how the NPS-FM must be applied.
<b>Resources:</b>	provide links to supporting literature and best information available to implement the NPS-FM.

### Tools

[When available]

### Examples

[When available]

### Case studies

[When available]

### Evidence

[When available]

### Resources

Perception Planning Ltd. (2017). Making GREAT Freshwater Policy and Decision Making for Future Generations. Prepared for: International Rivers Symposium, Brisbane.

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*Fish and Game, Forest and Bird and Choose Clean Water have written this practice note to communicate their expectation on how regional councils should implement the National Policy Statement for Freshwater Management 2020 (NPS-FM) into their regional plans. This is one in a series of practices notes which have been prepared on various topics relating to NPS-FM implementation.*