



Enhancing river protection NZCA recommendations

Protect outstanding rivers

1. Government commitment is required to protect river systems and river reaches that remain in or are close to, their natural state and or have outstanding wild, scenic and amenity characteristics.

Many of our rivers are already highly altered from their natural state, especially in their lowland reaches. A commitment to protect those remaining outstanding or natural rivers would prevent any further loss of these high-value rivers. Once these values are lost it is expensive and almost impossible to return them to their previous state—a poor legacy for future generations.

Establish a network of protected rivers

2. A key objective of national water policy should be the establishment of a representative network of protected rivers, including rivers with outstanding ecological, landscape, scenic, recreational, amenity and cultural characteristics and values.

It is important to protect a fully representative range of the different freshwater ecosystems, habitats and biodiversity. While some upland rivers and mountain streams are included within our protected places, few

middle and lower reaches are protected. Many highly significant waterways have no formal protection whatsoever.

It is equally important that rivers with outstanding characteristics be protected, even if they are no longer in their natural state.

Once established, this network should be genuinely protected and not eroded by development proposals.

3. A stocktake of the extent of river protection in New Zealand is needed to provide baseline information, track progress towards the protection of a representative range of freshwater ecosystems and habitats, and determine where additional protection is needed.

This baseline information would ensure future policy is developed on a fully informed platform. The protection of rivers could be enhanced if a national inventory of outstanding rivers (and parts of rivers) were compiled to identify and prioritise candidate rivers. This would ensure rivers with the highest ranking values are targeted for protection.

4. Allocate a government or quasi-government agency specific responsibility for protecting rivers, including advancing water conservation orders (WCOs).

No government agency has a specific responsibility to preserve and protect rivers as an entity. Giving a single agency this responsibility could help promote a more strategic approach to river protection generally, and WCOs specifically, so as to protect a representative range of rivers with outstanding values.

5. Regional councils could make greater use of prohibited activity status in regional plans to secure protection (from development and extractive uses) for remaining wild and natural rivers with outstanding values.

While non-complying activity status in a regional plan provides a signal to users as to what is considered an inappropriate activity due to the values of a specified location, it does not guarantee that development proposals that affect those values will be declined as evidenced by the 2010-approved hydro-electricity scheme for the Wairau River.

Ensure water management properly reflects the conservation status of conservation land and the rivers within it

6. RMA decision-makers should be required to have regard to the protected status of lands and waters managed by DOC if these are affected



by a consent application, to properly reflect the protection component of sustainable management.

Each river is an ecological corridor from its source in mountains or hill country to its end at the sea, and is affected in different parts by the activities on or alongside the river. Although public conservation land has a protected status, and in a limited number of instances the water also, they can be negatively impacted by activities upstream, downstream and around them, as they are all parts of complicated interconnected ecosystems. It is therefore important that the impact of activities on conservation values are explicitly required to be considered in decision-making.

7. The RMA should be amended to include conservation management strategies and conservation and national park management plans by name in section 104(1)(b) or (c) as matters that consent authorities must have regard to.

While a consent authority has the discretion whether or not to consider them under section 104(1)(c) RMA ("any other matter the consent authority considers relevant and reasonably necessary to determine the application"), their specific inclusion would ensure that such strategies and plans are considered.

Such an amendment would be consistent with the approach taken in section 66(2)(c)(i) where regional plans must have regard for them.

8. Landowner permission should be obtained prior to lodging resource consent applications to modify or

extract water from rivers in public conservation land.

Applicants for resource consents that will affect public conservation land currently do not need to first get landowner (i.e. DOC) permission under conservation legislation. This means that a full consent process can be completed only to have use of conservation land, where required, declined.

9. Rivers, including water, within national park boundaries should have national park status.

Owing to their large size and high level of protection, national parks are of particular importance for river protection. In most cases, national park status protects the beds of all water bodies within the park boundaries but in only some cases does it cover the water. Even then, the protection provided by national park status does not extend to river flows, nor does protection extend beyond national park boundaries. Therefore, even if a river is in part in a national park, it is not protected in its entirety.

Indigenous biodiversity

10. A Statement of National Priorities for Protecting Rare and Threatened Biodiversity in Freshwater Environments should be issued or the current proposed NPS for Indigenous Biodiversity or the NPS Freshwater Management expanded to specifically include freshwater indigenous biodiversity.

New Zealand's freshwater indigenous biodiversity is unique—92 per cent of our freshwater fish species are endemic because of our evolutionary

history isolated from other land masses—and is in decline. Its protection needs to be made a priority in decision-making around land and water management for this decline to be halted and reversed. Whilst a draft NPS for Indigenous Biodiversity has been released, it only covers (a narrow range of) terrestrial species.

Protect Crown riverbeds

11. Crown riverbeds with conservation values should be managed for those values.

The Land Act 1948 should be amended to provide for the establishment of management objectives for Crown land including riverbeds and a public consultation process for the disposal or leasing of any interest in them.

Extensive areas of riverbed are managed as Crown land. They provide critical habitat for braided river birds and riverbed plants. There is no requirement for them to have management objectives or for there to be public input into decisions about their use or management.

Mechanisms in conservation legislation

12. The opportunities available to enhance protection for rivers by applying faunistic reserve or watercourse area status should be explored by DOC.

The National Parks, Conservation, Wildlife and Reserves Acts, and the Freshwater Fisheries Regulations 1983 enable varying levels of protection of freshwater habitats with significant conservation values through such instruments.



Retain WCOs and improve their use

13. WCOs should be retained to provide protection for rivers and other water bodies with outstanding values.

Regional planning has often lagged behind increasing demand for abstraction of surface water. WCOs have been valuable in augmenting regional water planning through setting flow and allocation regimes for particular rivers in the absence of regional or catchment plans.

WCOs are achieved through a transparent and robust process requiring a significant investment of time and expertise by applicants, user groups, and submitters, and careful consideration of technical and other evidence by Special Tribunals and testing of evidence by the Environment Court.

14. The RMA should be amended to enable a WCO to include provisions applying to land use that may impact on the effect of a WCO, and to require local authorities to have particular regard to the protection of outstanding values, as recognised by a WCO, in managing land use through plans and consent decisions in catchments where the river is subject to a WCO.

This would help implement the recommendation of the Land and Water Forum that the WCO provisions in the RMA be amended to enable them to achieve an integrated management approach.

15. The RMA should be amended so that WCOs can provide for enhancement of outstanding characteristics.

Case law indicates that enhancement of an outstanding characteristic (e.g. of a threatened species population through an improved flow regime) is beyond the scope of the legislation.

16. The two year restriction on applications to amend or revoke operative WCOs should be lengthened. Or alternatively, give WCOs greater permanency appropriate to the rigorous process for achieving a WCO.

17. Canterbury rivers should be considered under the standard RMA process after October 2013.

In Canterbury, the ECan Act means WCO applications are considered against different criteria with Environment Canterbury Commissioners rather than a Special Tribunal making recommendations to the Minister. The Environment Court now has no jurisdiction over WCOs in the Canterbury region.

The different statutory tests for a new WCO or applications to amend an existing WCO in Canterbury mean significantly less weight is given to the requirement to preserve and protect nationally outstanding water bodies, and greater weight is given to potential uses of water.

Improve river management under the RMA

18. A National Environmental Standard on Ecological Flows and Water Levels should be implemented.

Additional national standards and policy guidance for recognition of river values not covered by the proposed National Environmental Standard on

Ecological Flows and Water Levels would help provide more comprehensive protection for river values.

Establishing standards for water is both politically and technically difficult and expensive. If requirements in the NPS Freshwater Management to establish standards for all rivers in all regions are to be met in a nationally consistent and meaningful way, there needs to be national guidance on how to set these standards and what they must encompass. Without NESs setting flow and quality standards, litigation by vested interests will continue in each region.

The NES needs to include a tool that sets 'hard limits', i.e. takes beyond the limits set in plans are not allowed. Currently most plans allow consents to be applied for, and granted, beyond the allocation limit set in a plan.

19. The RMA should be amended to allow regional councils to use moratoria (similar to those in the ECan Act 2010) to pause consent applications while a river's in-stream values are assessed, flow regimes developed, and plans amended.

Consents involve legal rights to use water. It can be legally difficult and prohibitively expensive to take back water that has been allocated if it is subsequently found that a river is over allocated and not able to sustain its in-stream values.



Retain WCOs and improve their use

13. WCOs should be retained to provide protection for rivers and other water bodies with outstanding values.

Regional planning has often lagged behind increasing demand for abstraction of surface water. WCOs have been valuable in augmenting regional water planning through setting flow and allocation regimes for particular rivers in the absence of regional or catchment plans.

WCOs are achieved through a transparent and robust process requiring a significant investment of time and expertise by applicants, user groups, and submitters, and careful consideration of technical and other evidence by Special Tribunals and testing of evidence by the Environment Court.

14. The RMA should be amended to enable a WCO to include provisions applying to land use that may impact on the effect of a WCO, and to require local authorities to have particular regard to the protection of outstanding values, as recognised by a WCO, in managing land use through plans and consent decisions in catchments where the river is subject to a WCO.

This would help implement the recommendation of the Land and Water Forum that the WCO provisions in the RMA be amended to enable them to achieve an integrated management approach.

15. The RMA should be amended so that WCOs can provide for enhancement of outstanding characteristics.

Case law indicates that enhancement of an outstanding characteristic (e.g. of a threatened species population through an improved flow regime) is beyond the scope of the legislation.

16. The two year restriction on applications to amend or revoke operative WCOs should be lengthened. Or alternatively, give WCOs greater permanency appropriate to the rigorous process for achieving a WCO.

17. Canterbury rivers should be considered under the standard RMA process after October 2013.

In Canterbury, the ECan Act means WCO applications are considered against different criteria with Environment Canterbury Commissioners rather than a Special Tribunal making recommendations to the Minister. The Environment Court now has no jurisdiction over WCOs in the Canterbury region.

The different statutory tests for a new WCO or applications to amend an existing WCO in Canterbury mean significantly less weight is given to the requirement to preserve and protect nationally outstanding water bodies, and greater weight is given to potential uses of water.

Improve river management under the RMA

18. A National Environmental Standard on Ecological Flows and Water Levels should be implemented.

Additional national standards and policy guidance for recognition of river values not covered by the proposed National Environmental Standard on

Ecological Flows and Water Levels would help provide more comprehensive protection for river values.

Establishing standards for water is both politically and technically difficult and expensive. If requirements in the NPS Freshwater Management to establish standards for all rivers in all regions are to be met in a nationally consistent and meaningful way, there needs to be national guidance on how to set these standards and what they must encompass. Without NESs setting flow and quality standards, litigation by vested interests will continue in each region.

The NES needs to include a tool that sets 'hard limits', i.e. takes beyond the limits set in plans are not allowed. Currently most plans allow consents to be applied for, and granted, beyond the allocation limit set in a plan.

19. The RMA should be amended to allow regional councils to use moratoria (similar to those in the ECan Act 2010) to pause consent applications while a river's in-stream values are assessed, flow regimes developed, and plans amended.

Consents involve legal rights to use water. It can be legally difficult and prohibitively expensive to take back water that has been allocated if it is subsequently found that a river is over allocated and not able to sustain its in-stream values.