

Office of the Minister for the Environment

Chair

Cabinet

National Policy Statement for Freshwater Management

Proposal

1. This paper seeks Cabinet's agreement to the release of the National Policy Statement for Freshwater Management (Appendix 2), prepared under the Resource Management Act 1991 (RMA). Subject to Cabinet agreement, I intend to recommend the National Policy Statement to the Governor General for approval.
2. This paper should be read alongside the Cabinet paper "Fresh Start for Fresh Water – Forward Work Programme", which sets out the broader context.

Executive summary

3. The National Policy Statement for Freshwater Management (NPS) seeks to provide clear direction to regional councils to manage fresh water, in an integrated and sustainable way while providing for economic growth, within set resource use limits. The OECD, in its 2011 Economic Survey of New Zealand, recommended that national policy statements and national environmental standards should be established to better guide local decision making on natural resource management.
4. The government has committed to improving freshwater management in New Zealand under the Fresh Start for Fresh Water programme, and the NPS has been part of that broader work programme. The findings from work to date (see the parallel paper "Fresh Start for Fresh Water – Forward Work Programme"), including the Land and Water Forum's recommendations, support my decision to progress the NPS quickly.
5. The NPS is an early and necessary component for improving freshwater management in New Zealand. It is an important part of the wider Fresh Start for Fresh Water reform package, and is being progressed (alongside the irrigation fund and Fresh Start for Fresh Water clean-up assistance fund) as part of the first tranche of that broader work programme to help to clarify the regulatory framework for the reform package as a whole. The next tranches of the broader reform package will be integral for supporting councils in giving effect to the NPS, and will deal with matters outside the scope of the NPS (such as governance).
6. The effect of the NPS will be that decision-makers will be required to have specific regard to the management of fresh water as a matter of national significance in their regional policy statements, regional and district plans, and

day-to-day resource management activities, such as considering resource consent applications.

7. The NPS sets objectives and policies that regional councils must address in their RMA planning and decision-making. It specifically provides direction on these key areas:
 - a. setting and implementing limits for water quantity and quality are central to water management;
 - b. water that is available for 'out of stream' use (once limits are set) must be allocated fairly, efficiently, and maximise benefits to the country and local communities;
 - c. better integration of fresh water and land management is provided for;
 - d. outstanding freshwater resources should be protected (including wetlands);
 - e. existing over-allocation (for both water quality and quantity) must be reduced and further over-allocation avoided; and
 - f. councils should involve iwi and hapū in the management of fresh water, and in particular, work with them to identify their values and reflect this in freshwater planning.
8. I have considered the Board of Inquiry's report and recommendations, and have decided to accept it as a basis to work from. However, I have made amendments to their recommended objectives and policies to reduce the likely cost of implementation and align more closely with the government's overall policy approach, including a better recognition of people's economic well-being within an environmental context. These amendments are within scope of the public submissions and evidence received by the Board on the draft NPS, as well as the purpose of the RMA.
9. The cost benefit evaluation required under section 32 of the RMA has demonstrated that the objectives of the NPS generally represent the most appropriate way to achieve the purpose of the RMA. The quantified benefits are estimated at between \$15 million to \$328 million and the range of quantified costs at \$68 to \$101 million. There are also a number of benefits and costs that could not be quantified. There is a degree of uncertainty about the extent of the benefits and costs of the NPS, given that we do not yet know the level at which limits will be set in individual catchments, and the rigidity with which they will be applied by individual councils.
10. The evaluation did highlight that the NPS would need supporting measures to reduce costs and maximise its effectiveness. Some of these measures are proposed in this paper, others are expected to be part of the wider reform package. If these measures are not implemented in a timely manner, the NPS will be harder to deliver and will not be as effective as it could be in cutting the costs of planning and consenting. The development of such measures will require engagement with local government and key stakeholders over the next 6 to 12 months.
11. The NPS will come into force on 1 July 2011. The immediate impact of the NPS is likely to be limited. This is because the majority of provisions require local

authorities to amend their statutory documents to give effect to the provisions of the NPS using the Schedule 1 process under the RMA. It will have an immediate effect on resource consent consideration as decisions will have to “have regard” to the NPS.

Background

12. Policy work towards the development of a proposed NPS began following a government directive in April 2006 [CAB Min (06) 11/11 refers]. In June 2008 Cabinet agreed to publicly notify a proposed NPS and establish a Board of Inquiry (the Board) to hear submissions and make recommendations [Cab Min (08) 27/21 refers].
13. In June 2009, Cabinet agreed to a new strategic direction to improve freshwater management (CAB Min (09) 20/12 refers). Cabinet agreed that the new policy direction should be shaped by the assumption that resource limits will be set, within which different values in water must be balanced, in order to get the most value from finite water resources. It was also agreed that central government would provide stronger leadership and national direction, and investigate whether water management decisions are made at the right level. Cabinet agreed that development of the NPS would continue as part of this new approach.
14. The Board comprised Judge David Sheppard (Chair), Kevin Prime, Jenni Vernon and Dr Jon Harding. The Board publicly notified the proposed NPS on 28 August 2008 and held public hearings around the country from June to September 2009.
15. I was provided with the *Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management* in January 2010. Subsequent to the Board’s creation, this Government had established a collaborative stakeholder-led process through the Land and Water Forum (the Forum) and continued engagement with an Iwi Leaders Group, to look at the whole water management system. I was therefore reluctant to make a decision on the NPS until those processes finished. As part of the process, I asked the Forum to also consider the Board’s recommendations on the NPS.
16. In September 2010, the Forum provided the Minister of Agriculture and Forestry and me with its recommendations for improving freshwater management in New Zealand. It recommended that:

“The government should:

 - *promulgate a National Policy Statement for fresh water quickly. The current draft as recommended by the Board of Inquiry is a basis to work from.*
 - *consider changes in the following areas of the current draft –*
 - *the references to Tangata Whenua roles and Māori values and interests*
 - *drafting changes to policy C1 to include reference to “mitigate” in achieving prescribed standards*
 - *policy E2 to clarify what contamination means in relation to the objectives*

- *drafting changes to the transitional measures to correct a perceived vires problem.*
 - *consider promptly a set of issues which need further work. They include –*
 - *specific measures dealing with use and development*
 - *recognising the benefits of significant infrastructure*
 - *making environmental values more specific by adding an objective which protects the values of fishing, swimming and mahinga kai, and*
 - *providing for allocation efficiency.*
 - *deal with these issues through collaborative processes that consider a suite of national instruments (note: some Forum members think these issues should be addressed in the current NPS; others think they should be dealt with separately)."*
17. The Forum's recommendations have supported my decision to proceed with the proposed NPS on the basis of the work already done by the Board of Inquiry (as opposed to withdrawing it on the basis that fundamental changes were required). However, I consider that the broader Fresh Start for Fresh Water package is a more suitable means for dealing more fully with the wider set of issues raised in the Forum's recommendations, as outlined above.
 18. International reviews of New Zealand's performance also support my decision to make more use of national direction under the RMA. The OECD recommended in its 2011 Economic Survey of New Zealand (published on 27 April) that national policy statements and national environmental standards should be established to better guide local decision making on natural resource management.
 19. Subsequent work by officials to finalise the NPS has occurred alongside developing options for the broader Fresh Start for Fresh Water reform package.

Comment

Fresh Start for Fresh Water – the context for reform

20. Managing fresh water well is critical to New Zealand's future economic growth, environmental integrity, cultural well-being, and international reputation. Our current system for managing water is not fundamentally flawed, but our freshwater resources are under increasing pressure from competing human uses, and water quality and quantity levels are already unacceptable in some catchments – especially in lowland areas. Improvements to the current system for managing water, and the way it is implemented, are necessary so that community expectations for water quality and quantity can be better met, and to ensure that opportunities for improved productivity are not lost or constrained.
21. The underlying issue is that effective limits for water quantity and especially quality are not being adequately set and managed to.
22. The Fresh Start for Fresh Water programme is the government's overarching programme for delivering on the new strategic direction for fresh water agreed in June 2009. The NPS is an important and early part of the reform package. It will set in place some important ingredients of a strengthened limits-based

regime for water management, and will help clarify the regulatory framework for the reform package as a whole.

The need for an NPS for Freshwater Management

23. The RMA provides a framework for good water management practice, requiring decision-makers to provide for the protection of wetlands, lakes and rivers from inappropriate subdivision, use and development. However, there have been issues with implementation, with neither regional councils nor central government making sufficient use of the instruments and/or approaches available under the framework.
24. For instance, only four regional councils have a set of operative or proposed quality limits and flow regimes. Less than half of the 17 regional councils have allocation regimes. Only eight have numeric objectives or targets for water quality. Only one National Environmental Standard and one Regulation on fresh water have been issued by central government. Appendix 1 sets out indicative data on current council performance mapped against the provisions of the NPS.
25. As a result, the existing freshwater management framework is not achieving the desired outcomes for freshwater resources. Specific issues the NPS seeks to address include:
 - a. Degrading water quality: setting water quality limits is a big challenge for councils and to date limits have generally only been set in place *after* problems emerge.
 - b. Increasing demands and inefficient allocation: the allocation of water is growing substantially and we are hitting resource limits. The growing demand and scarcity of water is leading to inefficiencies in the current allocation system, which is predominantly first-in-first served.
 - c. Loss of wetlands: only 10% of our wetlands remain and they are continuing to come under pressure as a result of both direct and indirect effects of land use intensification.
 - d. Lack of integration in the management of land use and water: regional councils have as one of their functions the responsibility of managing land for the purposes of managing water quality and quantity. Yet land use is rarely managed through regional plans.
 - e. Variable iwi involvement: the RMA provides mechanisms for Treaty partnership with iwi/hapu in freshwater management, but these have not been well or widely utilised.
26. The need for greater national leadership and direction on such issues was highlighted in the submissions to the Board of Inquiry, in the Land and Water Forum recommendations, and was a consistent message from the public at the Forum's recent engagement meetings across the country.
27. An NPS is one of a number of policy options that government can use to provide national direction on freshwater management decision-making that is devolved to local government. Its purpose is to state objectives and policies on matters of national significance relevant for achieving the purpose of the RMA: to promote the sustainable management of natural and physical resources. NPSs are at the

top of the hierarchy of planning instruments under the RMA and local authorities must give effect to them through their regional policy statements and regional and district plans. RMA decision-makers must also have regard to NPSs when considering consent applications. The NPS will therefore help drive national consistency in local planning and decision-making under the RMA (while allowing for an appropriate level of regional flexibility) to enable the improved freshwater management being called for by New Zealanders.

28. An NPS is subordinate to the RMA under which it is made, and must relate to the functions assigned to local authorities and decision-makers under the Act. It is not a general statement of government policy. An NPS cannot alter or extend provisions of the Act.
29. The NPS is an early and necessary component for improving freshwater management in New Zealand. It is an important part of the wider Fresh Start for Fresh Water reform package, and is being progressed as part of the first tranche of that broader work programme to help to clarify the regulatory framework for the reform package as a whole.

Summary of the NPS for Freshwater Management provisions

30. The NPS contains objectives and policies to provide direction on water quality, water quantity, integrated management and tāngata whenua interests. The NPS has, as its major thrust, the setting of limits for both water quantity and quality. This is consistent with the direction agreed by Cabinet with respect to the New Start for Fresh Water programme in June 2009.

Water quality

31. Cabinet agreed in June 2009 that most water bodies will provide for most 'public values' and some level of use, which may impose constraints on economic development and land use; relatively few water bodies being highly protected in a natural state; and very few water bodies being degraded if it is agreed that the economic benefits are sufficient to outweigh the other costs.
32. The NPS includes objectives that set a bottom line for water quality: that water quality should be maintained or improved within a region, while providing for economic growth, social and cultural well-being.
33. The objective recognises that there are a small number of outstanding water bodies that should be protected. It recognises that degraded water bodies should be enhanced, although the quantum of enhancement and the timeframe involved will vary. This will be identified by regional councils in a target setting process at a catchment scale. The objective also recognises that a bottom line of at least maintaining water quality everywhere is not possible. It allows for some variability in terms of water quality as long as the overall water quality is maintained in a region. Essentially it allows for offsets within a region, including between catchments.

Water quantity

34. In relation to water quantity, the objectives relate to:
 - a. setting an environmental bottom line for water quantity while providing for economic growth, social and cultural well-being;

- b. avoiding over-allocation by setting limits in plans and managing to those limits in decision-making, and reducing existing over-allocation by setting targets and plans of action to meet these targets;
- c. maximising the efficiency in water allocation and use which will go some way toward ensuring that society gains the greatest benefits from the allocation of water available. The effectiveness of improving the efficiency in how water is allocated may be limited through an NPS. To be fully effective, the NPS would need to be complemented by other measures, such as economic instruments, which provide incentives to water users to change behaviours; and
- d. protecting wetlands: the Board identified the loss of wetlands as a national issue. Wetlands provide important ecosystem services, such as flood mitigation and habitat for whitebait species. With only 10% of wetlands left in New Zealand, these water bodies need specific protection. This will be considered in the limit-setting process.

Integrated management

- 35. Regional councils will be required to consider integrated management of water and land use, which will require working more closely with territorial authorities and other relevant parties. For example, land use activities and their associated diffuse discharges are a significant contributor to water quality degradation.

Tāngata whenua roles and interests

- 36. The NPS makes it clear that involvement of iwi and hapū is important in plan making. The related policies do no more or less than what is already provided for in the RMA. Councils will retain the ability to utilise existing tools under the RMA, such as joint management agreements, as they wish. The real benefit is clarifying that tāngata whenua values and interests should be identified by, or with, iwi and hapū and not just by councils themselves.

Effect of the NPS

- 37. The NPS is not able to insert rules directly into regional plans, so a council has some degree of flexibility in how it gives effect to the national objectives and policies in its region. Rules or methods adopted in a region may vary according to such matters as community values, the degree of environmental pressure and/or the most common types of activities that use or affect fresh water in the region.
- 38. The immediate impact of the NPS is likely to be limited as the majority of provisions require local authorities to amend their statutory documents to give effect to the provisions of the NPS using the Schedule 1 process under the RMA. The NPS will take effect over time as limits are set and plan changes are made. It will also have an immediate effect on resource consent consideration as decisions will have to “have regard” to the NPS.
- 39. Many councils are already (or are in the process of) addressing many of the matters set out in the NPS and may only require some changes to their plans. For other regions, significant work will be required. The NPS will be implemented progressively, with councils required to implement the policies by

December 2014. However, if it is impracticable to meet this deadline, they must set out a programme of defined, time-limited stages for implementation, where all policies must be fully implemented by December 2030. This progressive timeframe provides flexibility for those regions that need more time than others to implement the NPS.

40. Setting water quality limits will be the biggest challenge for all councils. To date, limits for fresh water quality have generally been set in place *after* problems emerge, with targets and methods for improvement then set.
41. The NPS will insert two transitional policies directly into regional plans, which will require councils to consider specific criteria when making decisions on resource consent applications. The intent is that the most serious potential adverse effects of activities, in relation to water use and discharge, are thoroughly considered and actively managed (to the extent that an NPS can achieve that) pending the inclusion of limits in plans. The policies only apply to activities where consent is applied for after the NPS takes effect. They do not apply to activities that do not require a consent. As the policies are limited to activities that already require resource consent, they are limited in their effectiveness as a transitional measure to 'hold the line' while limits are set. The reason for this is that a NPS is unable to insert rules directly into regional plans.
42. The "Fresh Start for Fresh Water – Forward Work Programme" paper provides more detail on how this risk might be managed, such as use of existing Ministerial intervention powers under the RMA (e.g. to direct a council to accelerate the plan change process to give effect to the NPS). As that paper notes, there is some risk of localised 'gold rushes' of land use changes before the NPS is fully implemented, but the NPS itself should not significantly worsen this risk in light of the more pressing drivers of land use change, such as international commodity prices.
43. I propose that the NPS come into force on 1 July 2011, to align with the operative date of other Fresh Start for Fresh Water initiatives.

Implications of the NPS – benefits and costs

44. There is a degree of uncertainty about the extent of the benefits and costs of the NPS given that the level at which the limits will be set in individual catchments, and the rigidity with which they will be applied by individual councils, is unknown.
45. The benefits of the NPS will largely arise from improvements in water quality or arresting the decline of water quality. Only a few studies have attempted to quantify such benefits in New Zealand. These studies suggest that the benefits could range from \$15 million to \$398 million. There are also likely to be benefits for New Zealand's image, which may influence the attractiveness of our products and services and as a tourist destination. The NPS will help protect New Zealand's international reputation and future-proof against trade barriers.
46. Benefits are also likely to arise from greater investor certainty, and incentives for technical innovation to optimise production within known resource limits. As a result, a decrease in resource consenting costs is anticipated. There will also be improvements in the efficiency with which water is allocated, resulting in New Zealanders obtaining greater value over time from our limited water resources.

47. For numerous groups, and in particular iwi and hapū, the NPS can be expected to have benefits both in terms of certainty regarding fresh water outcomes and involvement in the regional plan processes.
48. The quantified costs (over and above the status quo) are estimated to range between \$68 and \$101 million but will be spread over several years.
49. The main quantifiable costs will be incurred by regional councils who will be directed to change their regional plans, and stakeholders who will be involved in the planning process. Costs will be incurred to regional councils through the background research necessary, their own plan and hearing processes, and through Environment Court appeals. Given the significant nature of the changes, particularly in relation to the setting of water quality limits, these may be relatively large and contentious.
50. Costs are also expected to be incurred by industry groups, particularly primary industries and hydro-electricity generators, as they engage in and respond to the regional plan changes. Territorial local authorities, local communities, NGOs and iwi and hapū can also be expected to incur costs through their participation in these processes.
51. Potentially significant opportunity costs have not been able to be quantified and would be additional to the quantified costs. This is due to limiting resource use to defined levels. On the other hand, if no action is taken towards improving freshwater management, there will also be opportunity costs associated with ongoing degradation.
52. The nature and size of costs, and who bears them will depend on supporting measures, where limits are set and allocation tools.

Implementing and supplementing the NPS

53. The NPS will set in place some important ingredients of a strengthened limits-based regime for water management and will help clarify the regulatory framework for the reform package as a whole. While the RMA framework currently enables regional councils to set and manage to limits for both water quality and quantity, the NPS will require them to do so.
54. However, several policies still provide regional councils with a relatively large degree of discretion which will enable regional variation in biophysical, social, cultural and economic characteristics to be accommodated. To ensure that this discretion does not undermine the effectiveness of the provisions, additional detailed policy development and best practice guidance will be required to ensure regional councils have the tools to implement the NPS.
55. Stakeholders, including the Land and Water Forum and local authorities, have expressed their support for the development of complementary measures to support the implementation of the NPS. A number of information and research-based measures are envisaged at the national and regional levels to assist with the setting of limits, managing to limits and allocation methodologies. These will include refining appropriate science, information, research and models to inform decisions. Many of these initiatives will be supported by the Ministry for the Environment's broader Information Strategy. The Department of Conservation has developed the Freshwater Environments of New Zealand (FENZ) database.

Although this has been developed for managing biodiversity, it will be a useful tool for regional councils in implementing the NPS.

56. Training and support for those responsible for recommending and deciding on limits will also be needed to ensure that best use is made of the information, tools and methods that are already available. Work is also underway to develop non-statutory NPS guidance to be released as close as possible to the time the NPS is notified in the *New Zealand Gazette*.
57. Implementing the NPS will involve:
 - a. gazetting the NPS;
 - b. developing general guidance on decision-making and processes for implementing the provisions in the NPS (including the setting of water quality and quantity limits, the fair and efficient allocation of water within the limits set, improving integrated management, and involving iwi and hapū in freshwater management);
 - c. detailed work on the nature of limits, technical methods for describing limits and ways to implement limits to reduce the potential cost of the NPS;
 - d. work on supporting measures such as development of databases, catchment modelling and other scientific tools, to ensure that the decision making processes at a regional level are supported; and
 - e. additional RMA regulatory measures as required, for example National Environmental Standards.
58. The identification and development of the most effective package of supporting measures will require engagement with local government and other key stakeholders over the next six to 12 months. The Land and Water Forum has also recommended specific measures to implement the NPS which will inform the development of the package.
59. Officials will report to the lead Ministers for the Fresh Start for Fresh Water programme on these matters, but I anticipate seeking further Cabinet approval should additional regulatory measures or funding prove necessary.
60. As noted previously, the NPS will not deliver on all the elements of a comprehensive reform package for freshwater management. As part of the broader Fresh Start for Fresh Water package, and in addition to measures described in paragraph 55 above, policy work on limit-setting will begin in the short term to provide early signals on governance changes, to reduce uncertainty for water users, to support councils' planning and decision-making processes (e.g. to align with the new NPS), and to inform the ongoing conversation with iwi leaders on rights and interests. The broader reform package will also involve development of new tools and methods that will enable regional councils to manage efficiently within the new limits once they are in place (including methods for allocation and transfer of rights to take and discharge to water), and to provide water users with a range of tools for responding to the new limits.

Monitoring and reviewing the implementation and effectiveness of the NPS

61. The NPS suggests a review within five years of the NPS taking effect. This review will focus primarily on the effectiveness of the policies. In five years time, the policy framework to be developed under the Fresh Start for Fresh Water reform programme should be clear and it will be important that the NPS is still aligned with these measures.
62. This review will also help signal to local authorities that the NPS will be reviewed and monitored by central government.
63. Monitoring information will be collected through existing local and central government monitoring programmes. A number of initiatives are currently taking place through the Ministry for the Environment's information Strategy that will subsequently improve this existing monitoring information. These initiatives include improvements in freshwater data collection, analysis and reporting, freshwater market and non market information at a national scale, and information on the NPS's implementation in RMA planning documents and consenting decisions. This information will support good decision-making and understanding of the NPS's environmental outcomes to ensure a robust, evidence-based review in five years time.

Potentially contentious issues

Scope of changes to the NPS for Freshwater Management

64. While I have sought to retain the Board's recommendations wherever possible, I have made some changes to improve the workability of the NPS and its fit with the government's broader policy approach, including a better reflection of people's ability to provide for their economic well-being. Key changes to the Board's recommended NPS include:
 - a. The Board's recommended NPS would likely have come at a very significant cost to the primary sector and local government. I have made changes to objectives and policies to provide for a better balance of environmental and economic outcomes.
 - b. I decided to remove the Board's recommended general objective (A1) which was designed to give biophysical, intrinsic and other instream values precedence over other uses of fresh water. The objectives in the final NPS provide a better balance of all values, which is in line with the sustainable management principles of the RMA and the government's strategic direction on water policy agreed in June 2009.
 - c. The focus of some of the Board's recommended objectives and policies has been amended from 'avoid' to the 'avoid, remedy or mitigate' requirements of the RMA.
 - d. I have also made changes to the 'transitional provisions'. The policies recommended by the Board were considered to be *ultra vires* because they attempted to insert provisions which amounted to rules directly into regional plans. A NPS is only able to insert objectives and policies into a plan. The intent of the amended policies is that while the planning required by the NPS is undertaken by local authorities, the adverse effects of activities are explicitly considered by consent authorities.

- e. The review period has changed from ten to five years. This will ensure that risks associated with areas of uncertainty with NPS implementation and its relationship with the overall reforms can be mitigated and, where necessary, remedied.
65. The RMA (section 52) allows me to make changes to the NPS as notified 'as [I] think fit' after considering the Board's report and recommendations. While this might appear to allow a free hand, the scope for change is constrained by the RMA and principles of administrative law, including ensuring fairness to the general public and submitters. My ability to make changes does not extend to making changes beyond the scope of the Board process.
 66. The NPS has therefore been drafted with considerable care to ensure all policy changes that differ from the recommendations of the Board are within scope. Given the extent of the changes I have made, however, a challenge cannot be ruled out.
 67. Changes made to the objectives and policies to provide for a better balance of environmental and economic outcomes could be perceived by some, including environmental groups, as having weakened the NPS. Others will consider the revised version to be a more balanced and fair approach.

Relationship with other relevant instruments

68. The NPS for Renewable Electricity Generation provides for the development, operation, maintenance and upgrading of new and existing hydro-electricity structures to the extent applicable to the region or district. It does not address freshwater allocation. The NPS for Freshwater Management identifies electricity generation (which includes hydro-electricity) as one of the national values of fresh water. However it does not prioritise any particular national or local water uses or values over others.
69. The proposed NPS on Indigenous Biodiversity is being developed to provide greater direction on the management of indigenous biodiversity under the RMA. It covers the protection of the habitat of threatened and at risk species in rivers and lakes, while the Freshwater NPS complements this by protecting flows and quality. Both NPSs cover wetlands. The proposed NPS on Indigenous Biodiversity requires indigenous vegetation or habitats associated with wetlands to be regarded as significant for indigenous biodiversity. The NPS for Freshwater protects wetlands from drainage and/or contamination through the limit setting and managing to limits process. New Zealand has ratified the Ramsar Convention on Wetlands, which requires that all wetlands be managed to maintain their ecological integrity.
70. Under the Waikato-Tainui Raupatu claims (Waikato River) Settlement Act 2010, the Waikato River Authority's Vision and Strategy will prevail over any inconsistent provisions in the NPS. No provisions of the NPS for Freshwater Management are inconsistent with the Vision and Strategy. However, the NPS is less specific in terms of objectives, so the Vision and Strategy is likely to have a greater impact on Waikato's planning than the NPS.
71. The New Zealand Coastal Policy Statement 2010 (NZCPS) contains policies in relation to water quality in the coastal environment. Clearly management of coastal water and fresh water requires integrated management. The approach

in the Freshwater NPS is not inconsistent with the NZCPS but co-ordinated implementation of both documents is required.

Consultation

72. The following agencies have been consulted on this paper and their views have been taken into account: The Ministry of Agriculture and Forestry, Te Puni Kōkiri, The Ministry of Economic Development, The Treasury, The Department of Conservation, The Department of Internal Affairs, The Office of Treaty Settlements, The Ministry of Fisheries, and Department of Prime Minister and Cabinet.
73. The Department of Conservation generally supports gazettal of the NPS. However, in the Department's view, Objective A2 will better deliver the outcome anticipated by Cabinet where "most waterbodies would provide for most public values and some level of use, with relatively few being highly protected (in a pristine or natural state) and very few being highly degraded (if it is agreed that the economic benefits are sufficient to outweigh other costs)" if it is focused at a catchment scale, rather than by region. By applying at the regional scale Objective A2 seeks to ensure that there is maintenance of water quality across a group of waterbodies, rather than within waterbodies. This will allow contamination to occur, with mitigating actions taken in other areas (waterbodies) to prevent a net degradation. This approach opens up the possibility of serious degradation of certain waterbodies or catchments, and could result in some communities facing degradation with no compensating benefits. The calculation of the net effect of activities is also likely to be impractical or costly. Such an approach may be contrary to the approach that iwi have been seeking. The Department considers therefore that the appropriate management unit for such "unders and overs" management should be the catchment. I have considered these matters and do not agree.
74. Te Puni Kōkiri notes that the National Policy Statement only refers to iwi involvement in decision-making regarding planning or ensuring that iwi values and interests are identified and reflected in decision-making. Te Puni Kōkiri considers that this potentially pre-determines and constrains policy decisions on governance. It is also less than is currently provided in the Resource Management Act 1991. There are currently mechanisms under the RMA that would provide for iwi involvement in all freshwater decision-making eg Joint Management Agreements, transfer of powers, delegation of decisions and appointment of iwi commissioners. Therefore Te Puni Kōkiri considers that the National Policy Statement should refer to iwi involvement in all freshwater decision-making. I have considered these matters and do not agree.
75. As part of the section 32 Evaluation Report the following were consulted on the assumptions underlying the cost benefit analysis to ensure that costs and benefits were accurately assessed: Local Government New Zealand, Horizons Regional Council, Environment Waikato, Hawke's Bay Regional Council, the Small Group of the Land and Water Forum and the Iwi Advisors Group.

Financial implications

76. There are limited financial implications for the Ministry for the Environment arising from the proposals in this paper. Costs relating to the initial development of guidance material of the NPS for Freshwater Management can be met from within the Ministry's baseline.

Human rights

77. There are no human rights implications or inconsistencies with the Human Rights Act 1993 as a result of the proposals in this paper.

Legislative implications

78. There are no legislative implications arising from this paper.

Regulatory impact analysis

79. The Ministry for the Environment confirms that the Regulatory Impact Assessment requirements do apply to this proposal and a Regulatory Impact Statement (RIS) has been prepared (Appendix 3).
80. The section 32 evaluation identified where possible the costs and benefits arising from the proposals in this paper.
81. The main quantifiable cost will be incurred by regional councils in the short term for plan and policy changes (ranging between \$33 and \$49 million). While the quantified benefits will be mostly from improvements in water quality outcomes or at least the arrest in the decline of water quality (such benefits may range between \$14.7 and \$398 million). There are also many costs and benefits that cannot be quantified which are explained in the attached RIS.

Quality of the Impact Analysis

82. The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.
83. The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by Ministry for the Environment and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

Consistency with Government Statement on Regulation

84. I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:
- are required in the public interest
 - will deliver the highest net benefits of the practical options available, and

- are consistent with our commitments in the Government statement “Better Regulation, Less Regulation.

Publicity

85. The NPS will be publicly announced as part of the government’s announcements on the Fresh Start for Fresh Water reform package.
86. As a matter of courtesy, I have forwarded the final NPS and relevant papers to the Chair and members of the former Board of Inquiry for their information in advance of the release and notification of the NPS.
87. The RMA requires me, as soon as practicable after the NPS has been approved by the Governor-General in Council, to:
 - a. Issue the NPS by notice in the *Gazette*;
 - b. Publicly notify the NPS and send a copy to every local authority;
 - c. Provide every person who made a submission on the statement with a summary of the recommendations and a summary of my decision on the recommendations (including reasons for not adopting any recommendations); and
 - d. Present a copy of the statement to the House of Representatives.
88. I intend to make the NPS for Freshwater Management and relevant papers publicly available on the Ministry website at time of release and notification of the NPS in the *Gazette*.

Recommendations

89. The Minister for the Environment recommends that the Committee:
 1. **note** that:
 - 1.1. in April 2006 Cabinet agreed to the development of a proposed National Policy Statement [NPS] for Freshwater Management [CAB Min (06) 11/11 refers]
 - 1.2. in July 2008 Cabinet agreed to publicly notify a proposed NPS and establish a Board of Inquiry to hear submissions and report back to the Minister for the Environment with its recommendations [Cab Min (08) 27/21 refers]
 - 1.3. in June 2009 Cabinet confirmed the NPS as part of the New Start for Fresh Water programme [Cab Min (09) 20/12 refers]
 - 1.4. in January 2010 the Board of Inquiry provided its report and recommendations to the government
 2. **note** that I have considered the report and recommendations of the Board of Inquiry and have decided to use it as a basis to work from, but have also made changes to the proposed NPS, including to ensure a better recognition of people’s economic well-being within the environmental context

3. **agree** to the Minister for the Environment:
 - 3.1. recommending the National Policy Statement for Freshwater Management, attached as Appendix 2, to the Governor-General in Council for approval
 - 3.2. notifying the National Policy Statement for Freshwater Management in the *New Zealand Gazette*
4. **note** that the National Policy Statement for Freshwater Management will come into effect on 1 July 2011
5. **note** that the final NPS and relevant papers has been forwarded to the Chair and members of the former Board of Inquiry for their information in advance of the release and notification of the NPS in the *New Zealand Gazette*
6. **note** that:
 - 6.1. the NPS is part of the first tranche of work in the broader Fresh Start for Fresh Water reform package
 - 6.2. wider reforms are needed to build on the policy direction signalled in the NPS and to deal with matters that are beyond its scope, such as governance arrangements
7. **agree** to the development of the following measures needed to achieve effective implementation of the National Policy Statement for Freshwater Management:
 - 7.1. developing general guidance on decision-making and processes for implementing the provisions in the NPS (including the setting of water quality and quantity limits, the fair and efficient allocation of water within the limits set, improving integrated management, and involving iwi and hapū in freshwater management);
 - 7.2. detailed work on the nature of limits, technical methods for describing limits and ways to implement limits to reduce the potential cost of the NPS;
 - 7.3. work on supporting measures such as development of databases, catchment modelling and other scientific tools, to ensure that the decision making processes at a regional level are supported; and
 - 7.4. additional RMA regulatory measures as required, for example National Environmental Standards.

Hon Dr Nick Smith
Minister for the Environment
4 May 2011

Appendix 1: Status quo of regional plans and compliance with the NPS

	Policy A1 Set quality objectives & limits	Policy A2 Manage quality over-allocation	Policy B1/B5 Set quantity objectives & limits	Policy B2 Efficient allocation	Policy B3 Facilitate transfer	Policy B4 Encourage efficient use	Policy B6 Manage over-allocation	Policy C1/C2 Integrated management	Policy D1 Tāngata whenua interests
Regional Councils									
Auckland	0	0	1	x	0	2	x	1	1
BOP	1	0	2	x	x	1	1	1	2
Canterbury	1	1	2	x	x	1	0	1	1
Chatham Is	0	0	0	x	x	x	x	0	1
Gisborne	0	0	0	x	x	1	0	1	1
Hawkes Bay	1	0	1	x	2	2	1	1	1
Horizons	1	1	2	1	2	2	0	2	2
Marlborough	1	1	1	x	0	1	0	1	1
Nelson	1	1	1	x	1	2	0	1	1
Northland	1	1	0	x	1	1	1	0	1
Otago	0	1	1	x	x	1	x	1	x
Southland	1	1	2	x	x	1	0	1	x
Taranaki	0	0	0	x	x	1	0	1	x
Tasman	1	1	2	x	1	0	x	1	1
Waikato	1	1	2	x	2	2	0	x	0
Wellington	1	1	1	x	1	2	1	1	1
West Coast	0	0	0	x	x	1	0	x	x
Not compliant = 0	6	7	5		2	1	9	2	1
Some compliance = 1	11	10	7	1	4	8	4	12	10
Largely compliant = 2			5		3	6		1	1
Do not know = x				16	8	1	4	2	4

Amended source Harrison Grierson & NZIER, information based on the SKM (2010) Report on Regional Councils practices in setting limits. Please note, this is indicative and is only intended to provide a picture of the status quo and where possibly the NPS may require changes to plans.

**Appendix 2: National Policy Statement for Freshwater Management
2011**

Appendix 3: Regulatory Impact Statement on the National Policy Statement for Freshwater Management 2011