

**BOARD OF INQUIRY  
PROPOSED NATIONAL POLICY STATEMENT  
FOR FRESHWATER MANAGEMENT**

In the Matter                      of the Resource Management Act 1991

And

In the matter                      of a Proposed National Policy Statement for Freshwater  
Management

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**SYNOPSIS OF SUBMISSIONS FOR CONTACT ENERGY LIMITED**

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## Introduction

1. The purpose of these submissions is to address certain issues arising out of the submissions and, more particularly, the further submissions for Contact Energy Limited ("Contact"). Counsel is accompanied by Mr Mark Chrisp, a planning consultant, whose evidence has been pre circulated. Mr Chrisp's evidence deals in detail with the issues raised in Contact's primary submission and I do not, therefore, intend to address those matters, unless members of the Board have any questions they would wish Counsel to address.
2. Rather, it is proposed in these brief submissions to discuss some issues that arise out of the character of the document under consideration, and the range of submissions the Board of Inquiry has received from other parties as to what amendments might be made to it.

## Key Characteristics of Notified National Policy Statement

3. As Ms Powell made clear, addressing the Board on behalf of the Ministry for the Environment on the first day of its hearing of submissions, the purpose of the Proposed National Policy Statement for Freshwater Management ("the Proposed NPS") is to guide local authorities<sup>1</sup>. The reality is, however, that as currently framed, the Proposed NPS would not provide any meaningful level of national guidance, because it is expressed at such a level of generality that it would do little more than ensure that all regional councils promulgate regional plan provisions that address the checklist of water quality and quantity issues set out in the Proposed NPS.
4. As Ms Powell put it, the Proposed NPS is "*an RMA tool which will support the implementation of Government Policy, rather than the means to set the whole direction for water management*"<sup>2</sup>.
5. It is this characteristic (i.e. because the Proposed NPS provides little substantive "direction") which means that the Ministry evidently believes it can accommodate the announcement by Central Government of a parallel process potentially leading to a significant shift in the way in which New Zealand's freshwater resources may be managed in future.
6. For its part, Contact regards this approach as missing an important opportunity to guide regional decision-makers in key areas where the approach taken to date has lacked consistency. Most relevantly to Contact, that includes the

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<sup>1</sup> As distinct from users of the environment: Board of Inquiry Transcript at page 5.

<sup>2</sup> Board of Inquiry Transcript at page 14.

extent to which regional plans governing water allocation recognise and provide for the contribution the use of freshwater for production of renewable electricity generation makes to social and economic wellbeing. Mr Chrisp's evidence expands on the points made in Contact's submission and I do not propose to address it further at this time.

7. Many other submitters have sought that the Proposed NPS provide greater guidance as to the content of the regional plans that will be promulgated in accordance with its requirements. The nature of the guidance sought naturally reflects the interests of particular submitters.
8. Again, I do not propose to address the issues canvassed. Contact has filed further submissions and Mr Chrisp's evidence addresses most of the key points.
9. Rather, I seek to address the Board at a more fundamental level should it determine that it is appropriate for the Proposed NPS to provide a greater level of guidance than is currently the case.

#### **Procedural Implications of Amendments to Proposed NPS**

10. One of the problems with the current form of the Proposed NPS is that it is susceptible to amendment in virtually any direction the Board of Inquiry might choose. The range of submissions before the Board of Inquiry reflects that reality and their breadth<sup>3</sup> lays a jurisdictional foundation for a wide range of potential approaches, guided of course by the provisions of Part 2 of the Act.
11. It is similarly a practical reality that viewed on a nationwide basis, the provisions of Part 2 might steer the Board of Inquiry in any number of different directions, the detail of which cannot be foreseen by stakeholders with an interest in management of freshwater resources.
12. The end result could be a document that looks very different indeed to the Proposed NPS and it is submitted that the Board of Inquiry should be alert to the potential that it might inadvertently deprive stakeholders of a fair opportunity to be heard on matters of great concern to them.
13. Accordingly, it is submitted that should the Board of Inquiry form the preliminary view that it should recommend amendments which substantially alter the force and effect of the Proposed NPS (for example to include guidance on the

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<sup>3</sup> Refer for example to the submission of Environment Bay of Plenty summarized at page 19 of the summary of submissions.

content of particular objectives and policies required to be in regional plans), it would be appropriate to reconvene the Board's proceedings in order that submitters might have the opportunity to make submissions on the detailed amendments the Board has in mind.

14. The sections of the Act governing the Board's process do not impose any limitation on it seeking further input from submitters before it makes its report and recommendations to the Minister under section 51(2) and the Board's Terms of Reference envisage that this might be desirable.
15. Of course, this contingency may never arise. The Board of Inquiry may determine that the comparatively modest policy objectives of the Proposed NPS are appropriate and that the document can be promulgated largely in the form notified.
16. As, however, other submitters will no doubt already have observed, the management of freshwater resources is of critical importance both to the economy of New Zealand and to the social and cultural well being of a large number of New Zealanders. If the Board determines that it is appropriate for the Proposed NPS to provide real guidance as to how issues related to fresh water management should be resolved (not something it does at present), then it is submitted that it is only appropriate that the Board hear from affected stakeholders on the detailed exposition of the direction the Board believes that such management should take.

Dated this 26<sup>th</sup> day of August 2009.

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