

Submission

By the: Northland Regional Council

On

Proposed National Policy Statement for Freshwater Management

To: Ministry for the Environment, PO Box 10362, Wellington 6143

1. The Northland Regional Council ("the Council") thanks the Ministry for the Environment for the opportunity to make a submission on the proposed National Policy Statement for Freshwater Management ("the NPS").
2. The Council supports the intent of providing an NPS that aims to improve the sustainable management of freshwater, to protect our freshwater resources into the future, and to acknowledge the fundamental importance of water to all New Zealanders. However, the Council has some significant concerns with the proposed NPS as it is currently drafted, namely:
 - The proposed NPS is too process focused and prescriptive. The policy issues are not clearly defined. Clearer national direction should be provided to local authorities regarding what the freshwater management issues are and the outcomes that the NPS is trying to achieve;
 - The timeframes and costs associated with implementing the NPS are unreasonable and will put a significant amount of pressure on the Council's resources;
 - There needs to be clearer links and consistency between the NPS and other national documents and guidelines related to freshwater management (eg. National Environmental Statements and water quality guidelines);
 - "At risk" freshwater resources, those being at risk of becoming degraded if not specifically managed, are not recognised or provided for in the NPS;
 - A large number of terms are either not defined or are not consistent with terms used in the Resource Management Act (RMA) and this will result in unnecessary litigation for councils; and
 - More direction should be provided in defining priorities of water use in order to provide certainty to communities and water users.
3. In preparing this submission, the Council has considered what the key freshwater management issues are for Northland in the context of the sustainable management of Northland's freshwater resources. Additionally, the

Council has considered the position of the NPS in relation to the RMA and the range of policy statements and plans which exist in Northland.

4. The Council is a member of Local Government New Zealand ("LGNZ"). A copy of LGNZ's submission ("Submission to the Board of Inquiry on the Proposed National Policy Statement for Freshwater Management" – 06 January 2009) has been pre-circulated to the Council. The Council generally supports the "alternative NPS" as outlined in LGNZ's submission, however in the event that the Board of Inquiry decides to adopt, either in whole or in part, the alternative NPS then the Council requests an opportunity to make specific comments on any such revised NPS. This submission relates to the NPS as proposed by the Ministry for the Environment but also refers directly to some parts of the LGNZ submission (Note: to avoid duplication, the relevant sections of the LGNZ submission are not replicated in this submission).

National Guidance

5. The objectives of the proposed NPS, stating what aspects of freshwater management should be recognised as matters of national significance, are generally supported. However, the policies for their implementation generally provide little guidance, and direction other than to specify the process that local authorities must follow. The proposed NPS, in its current form, will require the majority of guidance and direction for regional and district plans to be provided by regional authorities through their Regional Policy Statements (RPS).
6. Local authorities have consistently requested that any NPS needs to retain the flexibility for local authorities to develop policies, rules and standards to best meet the needs of their region. However, the proposed NPS has not found the right balance between national guidance and local flexibility with the result being potentially significant financial costs to local authorities in interpreting and implementing the process-heavy policies.
7. Greater national guidance is required through high level policy direction while retaining local flexibility.

Potential Litigation

8. One of the key objectives of the proposed NPS should be to minimise the amount of potential litigation that local authorities may face. However, due to the lack of guidance, direction and certainty provided by the proposed NPS, local authorities will be open to considerable litigation when attempting to

interpret and implement the policies. For example, there are a number of significant new terms in the proposed NPS with no definitions and these would likely be challenged through the Courts.

9. Additional guidance on interpretation and provision of definition for new terms would be helpful and where possible terms should be consistent with those used in the RMA.

Key Freshwater Values

10. Policy 1 of the proposed NPS establishes a process for identifying outstanding and degraded water bodies with notable values. While the proposed NPS sets out the process to identify outstanding and degraded water bodies with notable values, it lacks overall direction or mandate to support regional decision making.
11. The development of nationally important values in relation to freshwater resources would be useful to guide local authorities in their decision making, reduce the potential for litigation, and provide a degree of national guidance whilst retaining local flexibility to identify which freshwater resources have these values. The Council supports LGNZ's approach of identification of national values or priorities for freshwater resources through its "Alternative NPS Objective 2".
12. The proposed NPS does not acknowledge that some freshwater resources are naturally "degraded" and may not be able to meet the national values. The Council supports the LGNZ submission in respect to acknowledging that such water resources exist and that they will not be subject to the overall intent of improving water quality to achieve national values.
13. Objective 3 in the proposed NPS seeks the progressive improvement of the quality of "appropriate" freshwater resources to ensure that they "reach or exceed a swimmable standard." The term "appropriate" is an ambiguous one and as such will be open to interpretation and potentially litigated through the Courts. More direction should be given as to which freshwater resources Objective 3 applies to. Likewise, what constitutes a "swimmable standard" is not defined and therefore also open to interpretation. The LGNZ submission introduces an alternative term "safe swimming" which is defined as that presented in Clause 5 of Schedule 3 of the RMA. Clause 5 presents 3 criteria, all of which are somewhat ambiguous. There have been a number of guidelines published relating to water quality for contact recreation and

swimming which cover these three criteria (e.g. Water Quality Guidelines No. 1 and No. 2 (1992 and 1994, respectively), Microbiological Water Quality Guidelines for Marine and Freshwater Recreational Areas (2003), and the ANZECC Water Quality Guidelines). It is the Council's submission that the NPS needs to provide specific national guidance regarding what standard is expected to be met for water to meet a "swimmable standard" (or similar term).

Timeframes

14. The timeframes specified in Policy 2 of the proposed NPS of 40 days for the notification of proposed regional and district plan changes to give effect to the RPS is unreasonable and unrealistic. Furthermore, the timeframes do not recognise the hierarchy of planning instruments and may result in key freshwater issues being addressed inconsistently between regional and district plans.
15. Realistic timeframes are required for the implementation of the changes to the RPS and these timeframes should be identified within each region's RPS.

Water Allocation and Use Priorities

16. The proposed NPS provides some direction in terms of managing demands for freshwater and setting use priorities in terms of water allocation (Objective 6 and Policy 1). However, the NPS should provide stronger direction in respect of managing allocation of freshwater resources such that there is sufficient water to meet drinking water demands, maintain environmental flows and levels, ensure efficient use of water, and ensure resilience to climate change.
17. Policy 1 of the proposed NPS provides priority for water to be used for "reasonable foreseeable domestic water supply" over other uses. However, this term could be narrowly interpreted as there is no definition of domestic water supply and it is unclear whether this includes or excludes municipal supply. It is the Council's submission that the NPS should include municipal supply together with domestic supply as priority uses, and a new term included, "domestic and municipal supply", in the NPS with an appropriate definition as suggested in the LGNZ submission.
18. Freshwater is a limited resource and one that is subject to increasing demand and competition between various sectors of the community. To ensure the most efficient and effective use of this resource regional authorities will need to set priorities of use, however the proposed NPS does not provide a clear mandate nor guidance for regional authorities to do this. This would leave

regional authorities open to litigation when attempting to set such priorities. The proposed NPS needs to provide a clear requirement for regional authorities to set priorities of water use and to ensure efficient use of a limited resource thereby reducing the potential for litigation. In this regard the Council supports the LGNZ submission, however it is our submission that LGNZ's "alternative NPS Policy 12(b)" should be altered such that it is mandatory ("may" should be replaced by "shall") for regional authorities to identify priorities for other uses (other than domestic and municipal water supply).

"At Risk" Freshwater Resources

19. The Council considers it important that the NPS recognises those freshwater resources which, although not currently in a degraded state, are at risk of becoming degraded if these freshwater resources are not specifically managed. The proposed NPS lacks any direction or guidance in respect to such "at risk" resources.
20. The Council generally supports LGNZ's approach in respect of identification and management of "at risk" freshwater resources as a priority.

Integrated Management

21. Integrated management of land use activities and the effects on freshwater resources is identified as a matter of national significance. However, the proposed NPS provides no clear guidance as to how to give effect to this.
22. One aspect of integrated management that the NPS should provide greater guidance on is how to address cumulative effects. Clear direction should be provided to regional councils to avoid the impacts of cumulative effects on water quality and provide a strong mandate to local authorities to refuse resource consent applications where the potential cumulative effects of an activity might compromise the minimum water quality standards and/or minimum flows or levels.

Tangata Whenua Values and Interests

23. Objective 8 and Policies 1, 4, and 5 of the proposed NPS seeks to ensure the involvement of both iwi and hapu and that "Tangata Whenua Values and Interests" (a new undefined term) are identified and reflected in the management of freshwater resources. The concern is that the provisions in their current form are unclear and overly onerous on both hapu and local authorities and will be difficult to effectively implement. For example, Northland has nine mandated iwi and many hapu. The Council considers that the NPS

should refer only to the term "Tangata Whenua", which ensures consistency with the terminology used in the RMA and also allows local authorities flexibility to make arrangements for Tangata Whenua (including iwi and hapu) involvement.

24. The proposed NPS should identify "Tangata Whenua Values and Interests" at a national level and require local authorities to ensure involvement at the Tangata Whenua level.

Wish to Be Heard

25. The Northland Regional Council wishes to be heard in support of this submission.

A handwritten signature in black ink, appearing to read 'L Hughes', written over a horizontal line.

Lawrayne Hughes
Strategy and Planning Director
Northland Regional Council
Private Bag 9021
Whangarei 0140

Dated: 23 January 2009.