



Local Government New Zealand
te pūtahi matakokiri

Submission to the Board of Inquiry on
the Proposed National Policy Statement for
Freshwater Management

From Local Government New Zealand

06 January 2009

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IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of a submission by **LOCAL
GOVERNMENT NEW ZEALAND**
on the Proposed National Policy
Statement for Freshwater
Management

SUBMISSION ON PROPOSAL FOR NATIONAL POLICY STATEMENT

To: **The Chairperson
Board of Inquiry - Water
Freepost Board of Inquiry -Water
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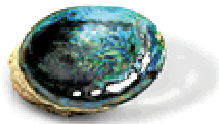
1. **This is a submission by *Local Government New Zealand* on the following proposed national policy statement:**
 - 1.1 Proposed National Policy Statement for Freshwater Management, notified on 20 September 2008 (“Proposed Freshwater Management NPS”)
3. ***Local Government New Zealand* submission and relief sought is set out in the attached document.**
4. ***Local Government New Zealand* wishes to be heard in support of its submission.**

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PART 1: INTRODUCTION AND GENERAL SUBMISSIONS



Local Government New Zealand

te pūtakehi matakōkiri

1. INTRODUCTION

1.1 *Local Government New Zealand* makes this submission to the Board of Inquiry appointed to inquire into and report on the Proposed National Policy Statement for Freshwater Management (“Proposed Freshwater Management NPS”) on behalf of the National Council representing the interests of territorial authorities and regional councils of New Zealand.

1.2 The process by which this submission has been prepared is addressed below.

Process followed

1.3 *Local Government New Zealand* represents both regional councils and territorial authorities. To ensure that all councils can participate and that the submission will represent the collective view of local government, the following process was adopted to prepare this submission:

- (a) A series of workshops were held with “working parties” of council officers from regional councils and territorial authorities. Key freshwater management issues were identified, and an “issues and options” paper was prepared and considered by the *Local Government New Zealand* Regional Affairs Water Management Sub-committee¹.
- (b) The “issues and options” paper was circulated to all local authorities. A copy of that paper is available on the *Local Government New Zealand* website².
- (c) Further workshops were held to consider the feedback received in response to the “issues and options” paper, the list of key issues, and preferred approach to addressing those key issues.
- (d) An “alternative NPS” (which represents *Local Government New Zealand’s* preferred approach) was prepared and circulated to technical working parties and the *Local Government New Zealand* Regional Affairs Water Management Sub-committee.
- (e) Following the above process, the *Local Government New Zealand* submission was finalised and approved by the *Local Government New Zealand* National Council.

1 The RAC Water Management Sub-committee has had long-standing involvement in the Sustainable Water Programme of Action and includes both regional council and territorial authority Mayors, Chairpersons and Chief Executives.

2 <http://www.lgnz.co.nz/projects/EnvironmentalSustainability/WaterManagement/index.html>

1.4 This submission is endorsed by the following members of the *Local Government New Zealand* National Council, who have delegations from the full National Council to approve this submission on their behalf:

- (a) Lawrence Yule, President
- (b) Kerry Prendergast, Vice President
- (c) Stephen Cairns, Environment Wellbeing Portfolio holder.

Scope of submission

1.5 This submission is set out in three parts, being:

- (a) Part 1 - General submissions (Sections 3 - 4).
- (b) Part 2 - Specific submissions, including a discussion of specific freshwater management issues, an analysis of how the Proposed Freshwater Management NPS addresses those issues, and *Local Government New Zealand's* preferred approach to addressing those issues (Sections 5 - 15).
- (c) Part 3 - The relief sought by *Local Government New Zealand*, including suggestions as to the form of an alternative NPS on Freshwater Management (Sections 16 - 20).

2. EXECUTIVE SUMMARY

2.1 Details of *Local Government New Zealand's* submission follow. A summary of that submission is set out below.

Proposed Freshwater Management NPS: Overview of issues

2.2 *Local Government New Zealand* generally agrees with the objectives of the Proposed Freshwater Management NPS, however submits that the NPS could be issues focussed rather than process orientated. *Local Government New Zealand* submits that the key issues arising out of the Proposed Freshwater Management NPS as drafted are:

- (a) The Proposed NPS is not easy to understand - the issues it seeks to address are not clearly defined and it could provide stronger national direction to local authorities.
- (b) The Freshwater Management NPS needs to recognise that many regional plans already address freshwater management issues and the Freshwater Management NPS should not undermine the work that has already been done.
- (c) The Proposed Freshwater Management NPS is prescriptive and leaves limited flexibility for regional councils to address freshwater issues. *Local Government New Zealand* submits that regional councils should have the flexibility to address freshwater management issues that arise on a region by region basis, including determination of the appropriate methods for giving effect to the Proposed Freshwater Management NPS.
- (d) The time frames for, and process costs associated with, implementing the Freshwater Management NPS will impose an unreasonable burden on the resources of local authorities in terms of both financial and physical resources. *Local Government New Zealand* submits that more appropriate time frames are necessary and that it would be appropriate for central government to provide financial assistance to local government to assist with implementation.
- (e) The different roles of regional councils and territorial authorities are not clear and further guidance could be provided.
- (f) There is a need to ensure that the Freshwater Management NPS is consistent with other national documents, including the Proposed National

Environmental Standard (NES) on Ecological Flows and Water Levels, and the Proposed NPS on Renewable Electricity Generation.

- (g) The broader responsibilities of local government in terms of the Local Government Act 2002 also need to be taken into account in drafting the Freshwater Management NPS.

Key issues to be addressed

2.3 *Local Government New Zealand* submits that a Freshwater Management NPS should:

- (a) Provide strong policy direction in respect of key freshwater management issues.
- (b) Provide for an integrated approach to decision making which takes into account the complex inter-relationships between key freshwater management issues and the freshwater systems themselves.
- (c) Provide flexibility for local authorities to address issues on a region by region basis.
- (d) Provide clarity with respect to national priorities in the context of freshwater management.

2.4 *Local Government New Zealand* therefore submits that the following key issues should be addressed by a Freshwater Management NPS:

- (a) An integrated approach to decision making.
- (b) Identification of key values, including key national values.
- (c) Provide guidance as to the allocation of freshwater resources.
- (d) Provide guidance as to setting priorities for water use.
- (e) Address the efficiency of water use, including the role of infrastructure.
- (f) Provide guidance to address cumulative effects.
- (g) Assist local authorities to manage “at risk” catchments.
- (h) Provide guidance to decision making where there is a lack of information or uncertainty of information.
- (i) Provide for effective monitoring and reporting.

- (j) Address Tangata Whenua issues.
- (k) Enable appropriate timeframes for implementation.

Integrated Approach to Decision Making

- 2.5 Complex inter-relationships exist in the context of freshwater management, both in terms of the nature of freshwater resources themselves, and with respect to community interests and values. *Local Government New Zealand* submits that freshwater management therefore needs to be viewed in an holistic manner in order to ensure that decisions made by local government do not compromise the ability to manage freshwater issues. The proposed Freshwater Management NPS focuses on the “integrated management of effects”, but does not expressly acknowledge the nature of the system sought to be managed nor set out the inter-relationships that exist in the context of freshwater management (in particular the relationship between surface water and ground water).
- 2.6 *Local Government New Zealand* submits that a preferred approach is to contain a clear direction to adopt a broad, holistic, and “integrated approach” to all levels of decision making which recognises the intrinsic behaviour and inter-connected nature of freshwater resources and suggests objectives and policies in that regard (see proposed Objective 1 and Policy 4).

Identification of Key Values

- 2.7 *Local Government New Zealand* submits that the Freshwater Management NPS should identify key national values with respect to the management of freshwater resources. The identification of those values needs to take into account that:
- (a) Freshwater resources have a range of values associated with them.
 - (b) Freshwater resources are at various levels of degradation.
 - (c) Freshwater resources can be naturally degraded.
 - (d) Freshwater resources may be valued for their assimilative capacity.
- 2.8 The Proposed Freshwater Management NPS identifies “swimmability” and “protection of life supporting capacity” etc as key values, however *Local Government New Zealand* submits that those values are not clearly identified as key national values, and that the Freshwater Management NPS would benefit from clearer direction in that regard. Further, the Proposed Freshwater Management NPS does not provide clear guidance as to how “outstanding freshwater resources” and “degraded freshwater resources” are to be addressed

by regional councils. The Freshwater Management NPS would benefit from further clarity in that regard.

2.9 *Local Government New Zealand* submits that the preferred approach is to:

- (a) Establish key national values which freshwater resources are expected to achieve.
- (b) Require identification of outstanding freshwater resources and the protection of values associated with those.
- (c) Require identification of degraded freshwater resources and require that those resources are enhanced (time frames to be set at a regional level).
- (d) Recognise that identification of the values of freshwater resources be undertaken in consultation with the community.

Managing Allocation of Freshwater Resources

2.10 *Local Government New Zealand* submits that the Freshwater Management NPS should provide a strong direction to manage allocation of freshwater resource for a range of reasons, including to avoid the over allocation of water resources and ensures sufficient supply for domestic and municipal needs. The Proposed Freshwater Management NPS provides some guidance in terms of managing demands for freshwater and *Local Government New Zealand* broadly supports those objectives and policies. *Local Government New Zealand* submits that the Freshwater Management NPS should provide a stronger mandate for regional councils to manage allocations particularly in over allocated catchments, and suggests some amendments to an existing objective and new policy to ensure that environmental flows etc are not breached.

Setting priorities for water use

2.11 Freshwater is a limited resource and one which is subject to increasing demand and competition between various sectors of the community. The general principle of “first come first served” applies to applications for water takes, and *Local Government New Zealand* submits that regional councils should be able, with their communities, to establish priorities for the allocation of water. *Local Government New Zealand* also submits that domestic and municipal supply should have priority over other users of water.

2.12 The Proposed Freshwater Management NPS does provide some direction in terms of managing demands and setting priorities and *Local Government*

New Zealand broadly supports that approach, but submits that more direction should be provided to require those priorities to be set. In that regard, *Local Government New Zealand* proposes objectives and policies that establish priority for domestic and municipal supply and require regional councils to set priorities for other uses on a region by region basis.

Efficiency of water use

- 2.13 *Local Government New Zealand* submits that the Freshwater Management NPS should address efficiency of water use including acknowledging that the co-ordination of infrastructure planning and development can contribute to increased efficiency of water use. The Proposed Freshwater Management NPS addresses water efficiency via a number of objectives and policies and addresses infrastructure co-ordination and planning, although it is in relation to the integrated management of effects of land use development rather than efficiency of water use or water quality. The Proposed Freshwater Management NPS also addresses efficiency, requiring that “industry good practice” be followed. This is a term which is not defined and is, in *Local Government New Zealand’s* submission, open to wide interpretation.
- 2.14 *Local Government New Zealand* submits that clear direction should be provided that requires territorial authorities to encourage the co-ordination and sequencing of infrastructure for efficient water use and requires regional councils to ensure that water is used in accordance with appropriate water conservation and demand practices.

Cumulative effects

- 2.15 *Local Government New Zealand* is concerned to ensure that the Freshwater Management NPS provides sufficient direction and support for local authorities to address cumulative effects on water quality and quantity. The Proposed Freshwater Management NPS generally addresses maintaining and enhancing water quality, including providing for the setting of freshwater quality standards and environmental flows and levels, which is essential to assist regional councils to manage cumulative effects. In that regard, *Local Government New Zealand* supports that approach but submits that clearer direction to avoid the impact on water quality and quantity of cumulative effects would be helpful to regional councils. *Local Government New Zealand* suggests a policy that provides a mandate to regional councils to ensure that freshwater quality standards and environmental flows and levels are not breached.

Managing “at risk” Catchments

- 2.16 *Local Government New Zealand* submits that the Freshwater Management NPS should assist regional councils to respond to catchments which are “at risk” of becoming degraded and risk compromising the values associated with that freshwater resource. The Proposed Freshwater Management NPS generally addresses the issues that, if left unchecked, could result in catchments becoming “at risk” but does not provide any guidance as to how to identify and manage those at risk catchments.
- 2.17 *Local Government New Zealand* submits that the Freshwater Management NPS should identify the management of “at risk” catchments as a priority and assist regional councils to identify “at risk” catchments.

Uncertainty of Information

- 2.18 *Local Government New Zealand* submits that local authorities face difficulties when making decisions where there is a lack of scientific certainty as to the effects of activities on freshwater resources, particularly when considering resource consent applications for water takes and discharges or setting environmental flows and levels and freshwater quality standards.
- 2.19 *Local Government New Zealand* submits that the Freshwater Management NPS should provide some guidance as to how decisions should be made where there is uncertainty. The Proposed Freshwater Management NPS does not contain any guidance in that regard and *Local Government New Zealand's* preferred approach is that the Freshwater Management NPS guide decision makers to adopt the precautionary approach and adaptive management techniques in that regard.

Tangata Whenua

- 2.20 The Proposed Freshwater Management NPS seeks to ensure the involvement of iwi and hapu in the management of freshwater resources. *Local Government New Zealand* supports Tangata Whenua involvement, but submits that requiring the involvement of iwi and hapu would impose a burden on both iwi and hapu and local authorities in terms of capacity and capability. In that regard, *Local Government New Zealand* submits that it is appropriate to refer to Tangata Whenua (which is consistent with the terminology used in the RMA) and which provides flexibility on a region by region basis for local authorities to work with all Maori within the region to address freshwater management issues.

Monitoring, Reporting, and Review

- 2.21 The proposed Freshwater Management NPS requires both regional and district councils to monitor and report on conditions of consent etc, and requires the Minister to undertake a review of the effectiveness of the Freshwater Management NPS. *Local Government New Zealand* submits that it is inappropriate to require district councils to monitor and report on freshwater management issues and that that obligation is more appropriately ascribed to regional councils. *Local Government New Zealand* also submits that the current obligations under the RMA to monitor such matters are sufficient and it is not necessary for the Freshwater Management NPS to impose further obligations in that regard.
- 2.22 *Local Government New Zealand* supports the requirement for the Minister to undertake a review of the effectiveness of the Freshwater Management NPS.

Timeframes for Implementation

- 2.23 The Freshwater Management NPS requires a significant amount of work to be undertaken in order to give effect to the objectives and policies of the NPS and in that regard, represents a significant burden on the physical and financial resources of local authorities. In that regard, *Local Government New Zealand* submits that the time frames for implementation of the objectives and policies of the Freshwater Management NPS should recognise the limitations of the available resources, and the Freshwater Management NPS should provide for appropriate time frames for such implementation.
- 2.24 *Local Government New Zealand* submits that the preferred approach is that the Freshwater Management NPS provide for reviews of regional policy statements (RPSs) as soon as practicable but no later than the next statutory review period, and for regional policy statements to set time frames for regional and district plans to be amended to give effect to the RPSs and the NPS.

Relief Sought: Alternative NPS

- 2.25 *Local Government New Zealand* seeks relief that will address the issues raised in its submission. In that regard, it proposes an alternative Freshwater Management NPS which adopts a different approach from the proposed Freshwater Management NPS and focuses on key freshwater management issues rather than prescribing the process that regional councils and territorial authorities must follow.

2.26 Part 3 of this submission sets out in detail a “straw man” alternative NPS which provides examples of objectives and policies which will address the issues raised in this submission. Please note, the intention is that the alternative NPS examples provide an indication of how the issues discussed in the accompanying narrative may be addressed.

3. PROPOSED FRESHWATER MANAGEMENT NPS: OVERVIEW OF ISSUES

3.1 The purpose of this section is to provide an overview of the issues that *Local Government New Zealand* submits arise out of the Proposed Freshwater Management NPS as drafted.

Process orientated approach

3.2 As a general comment, *Local Government New Zealand* agrees with the general objectives of the Proposed Freshwater Management NPS (subject to the comments that follow). However, *Local Government New Zealand* submits that the Proposed Freshwater Management NPS is overly process orientated rather than issues focussed. In that regard, the Proposed Freshwater Management NPS adopts a prescriptive approach to the process for the development of freshwater management policy through RPSs and regional and district plans. *Local Government New Zealand* submits that that approach gives rise to a number of issues, which are discussed below.

Clarity of issues and direction

3.3 At a basic level, *Local Government New Zealand* submits that the Proposed Freshwater Management NPS is not easy to understand and that it is difficult to ascertain the policy issues that it seeks to address. In that regard, the Proposed Freshwater Management NPS could have more clarity as to the policy issues that it seeks to address and could provide stronger national direction on those issues and the values that it seeks to achieve. *Local Government New Zealand* submits that an issues focussed approach (which is proposed by *Local Government New Zealand* in Part 3) would assist to provide ease of understanding, clarity of issues, and a clearer direction to local government in respect of those issues.

Freshwater management journey

3.4 *Local Government New Zealand* submits that the Proposed Freshwater Management NPS as drafted assumes that local government is at the beginning of the journey towards addressing freshwater management issues. This is reflected in the process-orientated approach adopted in the Proposed Freshwater Management NPS. In fact, regional councils are actively addressing these issues and many have recently promulgated plans (or plan changes/variations) which address freshwater management issues.

3.5 One example is Environment Waikato, which recently promulgated Regional Plan Variation 5 - Lake Taupo Catchment ("Lake Taupo Variation"), which addresses non-point source discharges of nitrogen into Lake Taupo, and Regional Plan

Variation 6 - Water Allocation ("Water Allocation Variation"), which addresses water allocation (including prioritising uses) and efficiency of use within the Waikato Region. Appeals in relation to the Lake Taupo Variation have recently been determined by the Environment Court. Decisions on the Water Allocation Variation were notified in October 2008.

- 3.6 In that regard, *Local Government New Zealand* submits that the Freshwater Management NPS should recognise that many regional councils have already promulgated plan changes to address freshwater issues and that the Freshwater Management NPS should not be inconsistent with, or undermine, the work that has already be done in that regard.

Flexibility in approach

- 3.7 Related to the above, the prescriptive approach that has been adopted leaves a limited amount of flexibility for regional councils to address freshwater issues in a manner that is relevant and appropriate to the key issues that arise in each region. In that regard, the Proposed Freshwater Management NPS not only requires planning instruments to be amended to give effect to the objectives of the NPS, but prescribes how that is to be achieved, including requiring that regional and district councils promulgate rules to address freshwater issues, including rules requiring conditions to be imposed on resource consents to address freshwater management issues.
- 3.8 In that regard, *Local Government New Zealand* submits that local authorities and their communities are in the best position to determine the appropriate mechanisms for addressing the issues that arise in their own regions and that a NPS (albeit with significant direction as to the issues that need to be addressed) in order to achieve an appropriate outcome.
- 3.9 A related issue is that those aspects of the Proposed Freshwater Management NPS which require specific rules to be promulgated (for example to require conditions on resource consents as required by Policy 2(c) and Policy 3) do not enable local authorities to undertake an evaluation as to whether such rules would be the most appropriate means of achieving the objectives of their regional and district plans, or whether other methods would be more appropriate, as required by section 32 of the Resource Management Act 1991 ("RMA"). In that regard, the section 32 report for the Proposed Freshwater Management NPS does not undertake such an evaluation.
- 3.10 *Local Government New Zealand* submits that the methods for giving effect to the objectives and policies of the Freshwater Management NPS should be matters for

regional councils and territorial authorities to determine, having regard to their responsibilities and obligations under the RMA and, particularly, in terms of section 32 of the RMA.

Process costs and time frames

- 3.11 The process prescribed by the Proposed Freshwater Management NPS requires policy statements to be notified within two years of the NPS commencing and regional and district plans to be notified within 40 days of the RPS being made operative. *Local Government New Zealand* is concerned that the process prescribed by the Proposed Freshwater Management NPS involves a significant amount of work to be undertaken by both regional councils and territorial authorities, which is likely to impose a burden on the resources of local authorities, in terms of both financial and physical resources.
- 3.12 *Local Government New Zealand* submits that the Freshwater Management NPS should recognise that implementing changes to policy statements and plans to give effect to the NPS is a task that will take significant time and resources. In order to ensure that those changes are well researched and considered, *Local Government New Zealand* submits that the Freshwater Management NPS should provide appropriate time frames within which such amendments shall be made. *Local Government New Zealand's* suggestions in that regard are set out in Part 3 (Proposed Policy 2).
- 3.13 *Local Government New Zealand* also notes that a lack of funding can have a negative impact on the ability to address freshwater management issues. In that regard, *Local Government New Zealand* submits that it would be appropriate for central government to assist by providing funding and support (e.g. implementation guide) to local government for the implementation of the Freshwater Management NPS.

Roles of regional councils and territorial authorities

- 3.14 As noted above, the Proposed Freshwater Management NPS requires regional councils and territorial authorities to make changes to their plans to give effect to the Freshwater Management NPS, including to promulgate rules to require conditions on consents to address freshwater management issues. In that regard, Policy 2 requires regional councils to impose conditions on water and discharge permits, and Policy 3 requires territorial authorities to impose conditions on land use and subdivision consents.

- 3.15 *Local Government New Zealand* submits that these policies could be interpreted to require territorial authorities to undertake functions that would more appropriately fall within the jurisdiction of a regional council. In that regard, regional councils' functions include the management of land use for the purpose of maintaining water quality. While territorial authorities have some jurisdiction relating to the quality of surface water of rivers and lakes, it may be more appropriate (at least in some cases) that the regional council control land use for the purposes of addressing freshwater management issues than territorial authorities, particularly where the regional council has the resource and the expertise to address those matters. Policies 2 and 3 may also result in an overlap of jurisdictions.
- 3.16 *Local Government New Zealand* submits that the roles of regional councils and territorial authorities need to be clearly defined and that it is appropriate that those roles be determined on a region by region basis by the regional councils and territorial authorities themselves. *Local Government New Zealand* suggests that RPSs set out the roles of regional councils and territorial authorities in that regard (Proposed Policy 2).

Relationship with other national documents

- 3.17 Central government has recently issued a number of proposed NPSs and proposed NESs which address resource management issues related to the management of freshwater resources. Examples include, the Proposed NES on Ecological Flows and Water Levels ("Proposed Ecological Flows NES"), the NES for Measurement of water Takes, and the Proposed NPS on Renewable Electricity Generation ("Proposed Renewable Generation NPS"). *Local Government New Zealand* submits that it is important that there is integration and linkage between the Proposed Freshwater Management NPS and these other national documents.
- 3.18 In relation to the relationship between the Proposed Freshwater Management NPS and the Proposed Ecological Flows NES, *Local Government New Zealand* submits that the Proposed Freshwater Management NPS, which sets out overarching policies and objectives relating to freshwater issues, should be finalised before the decision to proceed with the Proposed Ecological Flows NES is made. In that regard, *Local Government New Zealand* submits that it is essential to ensure that any NES that addresses freshwater management issues at a more specific level should be consistent with the Freshwater Management NPS, including in terms of common language and definitions of key terms.

- 3.19 In terms of the relationship between the Proposed Freshwater Management NPS and the Proposed Renewable Generation NPS, priority of users of freshwater resources is a matter which is relevant to both NPSs. In that regard, the Proposed Freshwater Management NPS as drafted prioritises domestic supply. The Proposed Renewable Generation NPS gives a “leg up” to renewable electricity generation, which includes hydro-electricity generation. Municipal water suppliers and hydro-electricity generators may compete for freshwater and *Local Government New Zealand* submits that central government needs to “pick a winner” and that both of the NPSs should address that issue. *Local Government New Zealand* submits that domestic and municipal supply should have priority (see below and Proposed Objective 7 and Proposed Policy 12).

Local Government Act obligations

- 3.20 It is also noted local authorities are required, under the Local Government Act 2002 (“LGA”) to promote the social, economic, environmental and cultural well-being of their communities, taking a sustainable development approach. While the purpose of an NPS is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA (i.e. sustainable management), *Local Government New Zealand's* submits that the NPS should reinforce and strengthen the linkages between community based sustainable development approach of the LGA with the sustainable management of natural and physical resources under the RMA.

Other matters

- 3.21 *Local Government New Zealand* submits that a number of other issues arise in the context of freshwater management that may be beyond the scope of the Proposed Freshwater Management NPS, but *Local Government New Zealand* wishes to raise them as matters that the Board of Inquiry may elect to report on to the Minister.
- 3.22 In that regard, *Local Government New Zealand* submits that:
- (a) Central government should provide some guidance as to how local authorities can work with central government to adopt and promote a “whole of government approach” to freshwater management.
 - (b) Central government provide an implementation package for the proposed NPS, including guidance material, research and funding.
 - (c) Central government-led activities such as funding which relate to freshwater management issues but which fall outside the RMA and NPS

should be aligned with the objectives of the Freshwater Management NPS. These include both research funding and infrastructure subsidy schemes, for example, the Ministry of Health sanitary waste subsidy scheme.

- (d) Central government should develop criteria as to the circumstances in which central government will make submissions on key projects.
- (e) Central government should develop criteria as to the circumstances in which Central Government will use the call-in process.
- (f) Central government should develop criteria as to how funding for clean up of water bodies, such as Lake Rotorua and Lake Taupo, will be allocated.
- (g) Central government should develop criteria as to the circumstances in which NESs will be developed.
- (h) Central government should develop criteria as to the circumstances in which changes to the RMA will be made.

4. FRESHWATER MANAGEMENT NPS - KEY ISSUES TO BE ADDRESSED

4.1 As noted above, *Local Government New Zealand* submits that a more appropriate approach to a Freshwater Management NPS is for the NPS to be issues focussed rather than process orientated. This section will set out the key matters that *Local Government New Zealand* submits the NPS should achieve and the key issues that *Local Government New Zealand* submits should be addressed by the Freshwater Management NPS. Those issues will be discussed in more detail in the sections that follow.

Key achievements of NPS

4.2 As a general comment, *Local Government New Zealand* considers that the Freshwater Management NPS represents an opportunity for the central government to identify national values and desired outcomes and assist local government decision makers to address the wide range of key freshwater management issues faced by local government.

4.3 In order to take advantage of the opportunity to address key freshwater management issues, *Local Government New Zealand* submits that a Freshwater Management NPS should accomplish the following:

- (a) Provide stronger policy direction and mandate to local government decision makers in respect of key freshwater management issues (which are discussed in this paper).
- (b) Provide for an integrated approach to local government decision making, which takes into account the complex interrelationships between key freshwater management issues and the freshwater systems themselves.
- (c) Provide flexibility for local authorities to address the key freshwater management issues in a manner which is appropriate to the region and district for which they are responsible.
- (d) Provide clarity around whether there are (or are not) any national priorities or values with respect to freshwater management.

Issues to be addressed in NPS

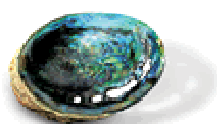
4.4 Based upon consultation undertaken with the local government sector, *Local Government New Zealand* submits that the key issues that should be addressed by a Freshwater Management NPS are as follows:

- (a) An integrated approach to decision making.

- (b) Identification of key values, including key national values.
- (c) Provide guidance as to the allocation of freshwater resources.
- (d) Provide guidance as to setting priorities for water use.
- (e) Address the efficiency of water use,
- (f) Provide guidance to address cumulative effects.
- (g) Assist local authorities to manage “at risk” catchments.
- (h) Provide guidance to decision making where there is a lack of information or an uncertainty of information.
- (i) Provide for effective monitoring and reporting.
- (j) Address Tangata Whenua issues.
- (k) Enable appropriate time frames for implementation.

4.5 A discussion of these issues and an analysis as to how they are addressed in the Proposed Freshwater Management NPS is contained in the sections that follow.

PART 2: SPECIFIC SUBMISSIONS



Local Government New Zealand

te pūtahi matakōkiri

5. AN INTEGRATED APPROACH TO DECISION MAKING

5.1 There are complex inter-relationships that exist in the context of freshwater management, both in terms of the nature of freshwater resources themselves and with respect to community interests and values. Examples of these interrelationships are:

- (a) The allocation and use of surface water impacts upon the availability and quality of ground water and vice versa.
- (b) Land use activities have an impact on water quality and on water quantity.
- (c) Management of freshwater resources has social, cultural, economic and environmental implications.
- (d) Over allocation of water affects water quality and low water quality in turn affects the ability to allocate water to a range of uses.
- (e) The development and use of water related infrastructure can influence the efficiency of water use and affect water allocation or water quality.
- (f) Freshwater management can impact upon water quality in the coastal marine area.

5.2 *Local Government New Zealand* submits that freshwater management therefore needs to be viewed in a holistic manner in order to ensure that all activities, whether directly related to freshwater management or not, do not compromise the ability to manage freshwater issues (i.e. water quality, efficiency of use etc). In that regard, *Local Government New Zealand* submits that it is important that:

- (a) The interconnected nature of the freshwater resource is recognised by the Freshwater Management NPS and relevant planning instruments, i.e. that freshwater systems include both surface water and ground water and are made up of complex geomorphological systems from the upper catchments to the coast.
- (b) Local authorities adopt an integrated approach to decision-making under the RMA, which reflects the inter-connected nature of freshwater resources, land use and the impact on the sustainable development of communities.

Proposed Freshwater Management NPS

- 5.3 The Proposed Freshwater Management NPS provides some guidance with respect to “integrated management of effects”. In that regard, the relationship between land use activities and water quality and quantity and the need to coordinate the provision of water related infrastructure is acknowledged in that context. However, it does not expressly acknowledge the nature of the systems sought to be managed nor set out the inter-relationships that exist in the context of freshwater management. In particular, the relationship between surface water and ground water is not expressly recognised.
- 5.4 *Local Government New Zealand* is also concerned that the Proposed Freshwater Management NPS contains an implicit emphasis and focus on the management of surface water resources (with less emphasis on groundwater resources).
- 5.5 Further, while focussing on the integrated management of effects, the Proposed Freshwater Management NPS does not adopt a high level approach towards the integrated management of resources. In that regard, *Local Government New Zealand* submits that this aspect of the Proposed Freshwater Management NPS may be too narrowly focussed.
- 5.6 Overall, *Local Government New Zealand* submits that the Proposed Freshwater Management NPS does not contain a clear direction to adopt a broad, holistic, and “integrated approach” to all levels of decision-making which recognises the intrinsic behaviour and interconnected nature of freshwater resources, including the complex interrelationships that exist in the context of freshwater management. *Local Government New Zealand* submits that it does not provide local authorities with a level of guidance in that regard beyond that generally provided by the RMA or in a manner that is more sophisticated than the level of analysis that most local authorities may have already undertaken.

Preferred approach

- 5.7 *Local Government New Zealand* submits that an appropriate approach would be to adopt an overarching objective, with a corresponding policy, which applies generally to all decision-making, and requires that a holistic and integrated approach to decision-making in relation to freshwater management. *Local Government New Zealand's* suggested amendments and the rationale for those amendments are set out in Part 3 (Proposed Objective 1 and Policy 4).

6. IDENTIFICATION OF KEY VALUES

6.1 *Local Government New Zealand* submits that the identification of key national values in relation to freshwater resources is important for the purposes of providing local authorities with goals in terms of addressing water quality and allocation issues, and will also give local authorities a strong direction and mandate to adopt mechanisms (both in terms of planning provisions and other methods) to address those issues.

6.2 *Local Government New Zealand* submits that there are a number of issues that arise in this context which need to be considered in establishing a regime for the purposes of identifying key national values to be achieved. They include:

- (a) The community at both a national and local level associates a range of values with individual freshwater resources. Some freshwater resources are managed primarily for municipal water supply, some freshwater resources are managed for electricity generation, some freshwater resources are particularly valued for fishing, swimming, etc. Other freshwater resources may have existing water quality greater than that required for fishing or swimming.
- (b) Freshwater resources are at various levels of degradation. In that regard, some freshwater resources will take longer than others to address that degradation. Similarly, the economic and social implications of improving water quality for surrounding land uses may require that time frames need to be adjusted to manage land use transition in order to improve in water quality.
- (c) Freshwater resources can be “naturally degraded” i.e. as a result of naturally occurring contaminants.

Proposed Freshwater Management NPS

6.3 While not clearly identified as key national values, key values can be discerned from Objectives 3 and 4 the Proposed Freshwater Management NPS. They are:

- (a) “Swimmability”; and
- (b) Protection of the life supporting capacity and ecological values for freshwater resources.

6.4 While *Local Government New Zealand* does not necessarily oppose those values, “swimmability” is not defined by the Proposed Freshwater Management NPS, and

“protection of the life supporting capacity” etc, simply restates section 5(2)(b) of the RMA. *Local Government New Zealand* submits that clear direction in terms of the key national values and goals that central government is trying to achieve is required.

- 6.5 The Proposed Freshwater Management NPS acknowledges that some freshwater resources will be outstanding and will require protection and that some freshwater resources will be degraded and require enhancement. At a broad level, *Local Government New Zealand* supports that concept. However, the Proposed Freshwater Management NPS does not provide clear guidance as to how local authorities are to treat “outstanding freshwater resources” and “degraded freshwater resources”. The only guidance in that regard is contained in the definitions of those terms.
- 6.6 In that regard, “degraded freshwater resources” are those whose “notable values” have been so degraded as to require that priority be given to enhancement or restoration, and “outstanding freshwater resources” are those whose notable values are such as to require that priority to be given to protection.³ The Proposed Freshwater Management NPS does not contain any guidance as to how those freshwater resources are to be prioritised in that sense except in Policy 1(c), which requires the establishment of freshwater quality standards and environmental flows and levels for all freshwater resources “including for the protection of notable values of any outstanding freshwater resources and the enhancement or restoration of notable values of any degraded freshwater resources”.⁴
- 6.7 While *Local Government New Zealand* acknowledges that setting environmental flows and water levels will assist to prevent further degradation of freshwater resources, it submits that the Proposed Freshwater Management NPS does not clearly establish a regime for either the protection of outstanding freshwater resources, the enhancement of degraded freshwater resources, or the maintenance of all other freshwater resources.
- 6.8 The Proposed Freshwater Management NPS requires the values of outstanding and degraded freshwater resources to be identified so that they can be protected or enhanced.⁵ *Local Government New Zealand* also broadly supports that concept. However, the Proposed Freshwater Management NPS does not

3 It is also noted that the method for doing so is circular, and therefore unclear, particularly insofar as regional councils are to identify “notable values” of outstanding freshwater resources and degraded freshwater resources (Policy 1(b)) but outstanding and degraded freshwater resources are in fact defined by their “notable values”.

4 Policy 1(c)

5 Policy 1(b)

acknowledge that freshwater resources may have a range of values associated with them, and that sustainable management of those resources requires a broader approach to improve water quality at a rate that meets the needs of the community. Further, the Proposed Freshwater Management NPS does not acknowledge that some water bodies may be naturally degraded and may not therefore be able to achieve key national values.

Preferred approach

6.9 *Local Government New Zealand* submits that clearer direction as to key national values is required in order to give local authorities strong direction to address water quality and allocation issues. In that regard, *Local Government New Zealand* prefers an approach which:

- (a) Establishes key national values which freshwater resources (with limited exceptions) are expected to achieve.
- (b) Requires identification of outstanding freshwater resources and requires the protection of the values associated with those resources.
- (c) Requires identification of degraded freshwater resources and requires that those freshwater resources are managed so as to enhance those freshwater resources. The NPS should acknowledge that some freshwater resources are naturally degraded and may not be able to achieve the national values, and that some freshwater resources are so degraded, are managed for other purposes, or will have significant costs associated with their repair, that they will require a longer period of time for rehabilitation before the national values can be achieved.
- (d) Recognises that the identification of the values of particular fresh water resources should be undertaken in consultation with the community.
- (e) Allows for the setting of appropriate time frames at a regional level based on consultation with the community.

6.10 Details of *Local Government New Zealand's* preferred approach and the rationale for that approach is set out in Part 3 (Proposed Objectives 2, 3, 4 and 5 and Policies 6, 7, 8 and 10).

7. MANAGING ALLOCATION OF FRESHWATER RESOURCES

- 7.1 Many freshwater resources across the country face issues relating to over allocation, particularly due to increasing demand for freshwater and the impacts of existing allocations on degraded water bodies. The over allocation of water resources can affect both the values of freshwater resources and water quality. Over allocation can also impact upon the efficiency of the use of water resources and on the ability of water users to access freshwater.
- 7.2 *Local Government New Zealand* submits that the Freshwater Management NPS should provide a strong direction to manage allocation of freshwater resources to ensure that sufficient freshwater resources are available to meet domestic and municipal needs, to maintain environmental flows and levels, to ensure efficient use of water, and ensure resilience to climate change. In that regard, *Local Government New Zealand* submits that such direction would enable regional councils to address over allocation issues (including via section 128 reviews), where they arise.

Proposed Freshwater Management NPS

- 7.3 The Proposed Freshwater Management NPS provides some guidance in terms of managing demands for freshwater, via Objective 6 and Policy 1(i), and provides some general guidance in relation to the efficient use of freshwater.⁶ *Local Government New Zealand* broadly supports those objectives and policies, but submits that the Freshwater Management NPS should provide a stronger mandate for regional councils to manage allocations, including existing allocations, particularly in over allocated catchments.

Preferred approach

- 7.4 *Local Government New Zealand's* preferred approach is to amend Objective 6 to refer to the need to manage allocation of freshwater resources to ensure that sufficient freshwater resources are available to meet domestic and municipal needs, to maintain environmental flows and levels, to ensure efficient use of water, and ensure resilience to climate change, as set out in Part 3 (Proposed Objective 6 and Policy 10).

6 For example, Objective 7 (Efficient use of freshwater) and policies which promote the efficient use of freshwater (including Policy 1(i)(3), Policy 2(c)(1), (2) and (3B), Policy 3(b)(2), Policy 6(a) and (c))

8. SETTING PRIORITIES FOR WATER USE

- 8.1 Freshwater is a limited resource and one that is subject to increasing demand and intense competition between various sectors of the community, including, for example, municipal water supply, stock water, industry, irrigation, etc. Without policy guidance to the contrary, the general principle of “first come first served” applies to applications for water takes. *Local Government New Zealand* submits that the “first come first served” approach has implications for efficiency of use, it has the potential to put the availability of freshwater resources for municipal water supply at risk and where resource is contested, to increase litigation particularly with respect to applications for water takes. While regional councils are able to set priorities for water users (such as priority for municipal suppliers) via regional plans, the nature of the competing demands for freshwater means that setting those priorities is also likely to result in extensive litigation.
- 8.2 *Local Government New Zealand* submits that domestic and municipal supply should have priority over other uses of water, which includes water for household use and human drinking and sanitation needs, as well as municipal supply water used to undertake a range of activities that are important to the proper functioning of communities. In that regard, *Local Government New Zealand* submits that the separation of strictly domestic requirements from all other uses of municipal supply has the potential to create issues with respect to the consenting process, and devalues the broad range of municipal supply functions that are essential for the health and safety and social, economic, and cultural wellbeing of communities.

Proposed Freshwater Management NPS

- 8.3 The Proposed Freshwater Management NPS provides some direction in terms of managing demands for freshwater and setting priorities in terms of water allocation. In that regard, it contains an objective to manage demands for freshwater in a manner that has regard to, among other things, the available supply of freshwater.⁷
- 8.4 It also requires regional councils to guide and direct the management of demands in a manner which, among other things, provides certainty (including prioritisation of consumptive use takes, if appropriate), and provides priority for “reasonably foreseeable domestic water supply” over other takes (with appropriate demand strategies).⁸ It also requires regional councils to consider (in preparing regional

7 Objective 6
8 Policy 1(i)

planning instruments) the needs of primary and secondary industries and communities for sustainable freshwater supply.⁹

- 8.5 *Local Government New Zealand* broadly supports those concepts, but submits that the Proposed Freshwater Management NPS should provide more direction to prioritise domestic and municipal supply (not only domestic supply), and to require the setting of priorities in order to provide certainty to communities and to water users as to the most appropriate uses of the limited freshwater resource.

Preferred approach

- 8.6 *Local Government New Zealand* submits that the Freshwater Management NPS should establish priority for domestic and municipal supply as a minimum, and require regional councils to set priorities for other uses, providing some guidance in that regard. *Local Government New Zealand's* preferred approach and the rationale for that approach is set out in Part 3 (Proposed Objective 7 and Policy 12).

9. EFFICIENCY OF WATER USE

9.1 *Local Government New Zealand* submits that the Freshwater Management NPS should address efficiency of water use and, in that regard, require regional councils to implement mechanisms to encourage and ensure efficient water use.

9.2 *Local Government New Zealand* also submits that the way in which infrastructure for supply, storage, and distribution of freshwater is provided, including the sequencing of land use development with investment in infrastructure can significantly influence both the efficiency of water use and the allocation capacity. The Freshwater Management NPS could acknowledge that investment in infrastructure when considering priorities for allocation.

Proposed Freshwater Management NPS

9.3 The Proposed Freshwater Management NPS addresses water efficiency via Objective 7 and associated policies, including Policy 1(i)(iii) (managing demands to promote efficient use), Policies 2(c)(i) and 6 (conditions for efficient use), and Policy 5 (application of industry good practice to maximise efficient use).

9.4 In particular, the Proposed Freshwater Management NPS addresses infrastructure co-ordination and planning via Objective 2 and Policy 1(j), although those provisions appear to relate generally to the integrated management of effects of land use development rather than efficiency of water use. *Local Government New Zealand* supports infrastructure coordination and planning, but submits that the Proposed Freshwater Management NPS should refer to those matters in the context of efficient water use as well as the potential impacts on water quality.

9.5 The Proposed Freshwater Management NPS requires that “industry good practice” be applied with respect to water use. However, that term is not defined, and *Local Government New Zealand* submits that the term is uncertain and open to interpretation. In relation to water takes for domestic purposes, the Proposed Freshwater Management NPS requires that priority be given to such takes subject to appropriate demand management strategies. *Local Government New Zealand* supports that approach and submits that water conservation and demand management is more appropriate terminology to use in the context of efficient water use both in terms of domestic and municipal supply and industrial uses.

Preferred approach

9.6 *Local Government New Zealand's* preferred approach is that a clear direction be provided which requires:

- (a) Territorial authorities to plan for the development, co-ordination and sequencing of infrastructure for both efficient use of water and to address impacts on water quality; and
- (b) Regional councils to ensure that water is used in accordance with appropriate water conservation and demand practices, rather than “industry good practice”.

9.7 *Local Government New Zealand's* suggested approach to address these issues is contained in Part 3 (Proposed Objective 8 and Policies 13 and 14).

10. CUMULATIVE EFFECTS

- 10.1 A key issue that arises both in the context of water takes and discharges is the potential for cumulative effects on water quality and quantity to arise, particularly where a series of discharges (particularly non-point discharges) or water takes are considered in isolation and in the absence of water quality standards and minimum flows, etc. Cumulative effects particularly arise in the context of permitted activities or where the available information is inadequate.

Proposed Freshwater Management NPS

- 10.2 The Proposed Freshwater Management NPS generally addresses maintaining and enhancing water quality via the objectives¹⁰ and associated policies and provides for the setting of freshwater quality standards and environmental flows,¹¹ which will assist regional councils to manage cumulative effects.
- 10.3 *Local Government New Zealand* supports that approach, but submits that the Proposed Freshwater Management NPS does not otherwise provide a clear direction to regional councils to avoid the impact on water quality of cumulative effects, nor provide a 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 minimum flows etc.

Preferred approach

- 10.4 *Local Government New Zealand's* preferred approach is to include a policy that provides a mandate to regional councils to ensure that freshwater quality standards and environmental flows and levels are not breached. Details in that regard are set out in Part 3 (Proposed Policy 10).

10 Objective 3, Objective 4 and Objective 5

11 Policy 1(a)

11. MANAGING “AT RISK” CATCHMENTS

- 11.1 Local authorities face particular challenges managing catchments and water bodies where water quality or availability are “at risk” due to rapid changes in the surrounding environment, for example changes in land use. “At risk” catchments are those catchments whose values are at risk of becoming degraded if the regional council is not able to act within a short time frame.
- 11.2 It is difficult for local authorities to respond quickly to problems that arise in relation to water quality and availability, particularly where the environment/catchment is changing at a rate that local government’s current tools are not equipped to address.

Proposed Freshwater Management NPS

- 11.3 While the Proposed Freshwater Management NPS generally addresses the freshwater management issues that, if left unchecked, could result in catchments becoming “at risk”, the Proposed Freshwater Management NPS lacks any direction / guidance as to how to identify and manage “at risk” catchments. Further, the Proposed Freshwater Management NPS implies that priority should be given to the enhancement or restoration of “degraded freshwater resources” but not those that are “at risk” of becoming degraded.
- 11.4 In that regard, *Local Government New Zealand* submits that the Proposed Freshwater Management NPS should provide a strong mandate for local authorities to address issues arising in those catchments, while recognising that the appropriate approach to managing at risk catchments is particular to each local authority.

Preferred approach

- 11.5 *Local Government New Zealand* submits that the Freshwater Management NPS should identify the management of “at risk” catchments as a priority and assist in identifying “at risk” catchments. Details as to *Local Government New Zealand’s* preferred approach are contained in Part 3 (Proposed Objectives 2, 3, 4 and 5 and Policy 9).
- 11.6 *Local Government New Zealand* submits that it may be appropriate in some circumstances that regional councils impose a moratorium on resource consent applications, however acknowledges that such tools would need to be introduced via alternative means (for example a NES or amendments to the RMA).

12. UNCERTAINTY OF INFORMATION

12.1 *Local Government New Zealand* submits that local authorities face difficulties when making decision where there is a lack of scientific certainty as to the effects of activities on freshwater resources. The complex nature and behaviour of the freshwater resource can lend itself to uncertainty in that regard, particularly in the context of groundwater. In that regard, the ability to measure, model, and understand the resource can be limited.

12.2 In particular, local authorities may face those difficulties when, for example:

(a) Considering resource consent applications for water takes or discharges;
and

(b) Setting environmental flows and levels and fresh water quality standards.

12.3 *Local Government New Zealand* submits that the Freshwater Management NPS should provide some guidance as to how decisions should be made in the face of uncertainty. In particular, *Local Government New Zealand* submits that it is appropriate in these circumstances, in the context of freshwater management, that a precautionary approach and/or adaptive management techniques be adopted.

Proposed Freshwater Management NPS

12.4 The Proposed Freshwater Management NPS provides no direction or guidance in relation to how decisions can be made in the face of uncertainty of information. *Local Government New Zealand's* view is that it would be appropriate, and would assist local authorities to provide guidance in that regard.

Preferred approach

12.5 *Local Government New Zealand's* preferred approach is that the Proposed Freshwater Management NPS provide some guidance as to the appropriate approach for decision makers to take when faced with scientific uncertainty or a lack of information, being the adoption of the precautionary approach and adaptive management techniques. Details as to *Local Government New Zealand's* preferred approach are contained in Part 3 (Policy 11).

13. TANGATA WHENUA

Proposed Freshwater Management NPS

13.1 The Proposed Freshwater Management NPS seeks to ensure the involvement of both iwi and hapu, and that Tangata Whenua Values and Interests are identified and reflected in the management of freshwater resources.¹² *Local Government New Zealand* supports Tangata Whenua involvement in the management of freshwater resources and acknowledges that that involvement should be at a level that recognises iwi and hapu interests.

13.2 However, *Local Government New Zealand* submits that the following issues arise in terms of the Proposed Freshwater Management NPS as drafted:

- (a) The number of hapu in each district/region can be numerous (in some circumstances, in the hundreds) and the obligation on local authorities to involve both iwi and hapu may be onerous in terms of available resources for both local authorities and iwi and hapu.
- (b) The process identified in the Proposed Freshwater Management NPS for involvement does not address the capacity and capability of iwi/hapu to engage meaningfully in RMA decision-making.
- (c) The process identified in the Proposed Freshwater Management NPS overrides existing governance arrangements and reduces flexibility to develop appropriate processes for Maori to engage with their local councils in RMA processes.
- (d) The use of the terms “iwi” and “hapu” is inconsistent with the RMA, which uses the term “Tangata Whenua”.

13.3 *Local Government New Zealand* also submits that the term “Tangata Whenua Values and Interests” is a broad term, which is not defined, and it is uncertain as to what is meant by “interests” e.g. economic interests, ownership etc.

Preferred approach

13.4 *Local Government New Zealand's* preferred approach is to use the term “Tangata Whenua”, which ensures consistency with the terminology used in the RMA and allows flexibility for local authorities and Tangata Whenua to make appropriate arrangements for Tangata Whenua (including iwi and hapu) involvement. *Local Government New Zealand* also prefers to adopt the approach taken in the

Proposed New Zealand Coastal Policy Statement (NZCPS), with respect to the identification and recognition of characteristics of special interest to Tangata Whenua. Details of that approach are set out in Part 3 (Proposed Policy 5).

14. MONITORING AND REPORTING

Proposed Freshwater Management NPS

- 14.1 One of the objectives of the Proposed Freshwater Management NPS is that local authorities monitor and report in respect of the key objectives of the NPS. In that regard. Objective 9 states:

“To ensure that regional councils and territorial authorities undertake effective monitoring and reporting of the matters specified in objectives 1 - 8.”

- 14.2 That objective implies that “state of the environment” reporting is required. However the policies only require monitoring and reporting on conditions of consent¹³ and rules¹⁴, and not the objectives of the Proposed Freshwater Management NPS as set out in Objective 9. Thus, *Local Government New Zealand* submits that there appears to be a mis-match between Objective 9 and the associated policies.

- 14.3 *Local Government New Zealand* submits that regional councils are obliged to undertake monitoring under the RMA, and that the Freshwater Management NPS should not impose further obligations on regional councils in that regard. The Minister also has a role to put in place a monitoring framework to ensure sufficient information is available to undertake a review of the NPS.

- 14.4 *Local Government New Zealand* further submits that it is inappropriate to require district councils to gather monitoring data as their capacity and capability is limited in that respect.

- 14.5 The Proposed Freshwater Management NPS requires the Minister to under-take a review of the effectiveness of the Freshwater Management NPS and *Local Government New Zealand* supports that approach.

Preferred approach

- 14.6 *Local Government New Zealand* submits that the preferred approach is to rely upon the monitoring obligations under the RMA and require a review of the effectiveness of the Freshwater Management NPS as required by the Proposed Freshwater Management NPS as drafted (Proposed Policy 1).

13 See Policy 2(c)(iv), Policy 6(e)

14 See Policy 3(c)

15. **TIME FRAMES AND IMPLEMENTATION**

- 15.1 As noted above, *Local Government New Zealand* submits that the Freshwater Management NPS represents a significant burden on the physical and financial resources of local authorities. In particular, *Local Government New Zealand* submits that there is likely to be a significant cost involved in bringing forward plan changes to meet the time frames set out in the Proposed Freshwater Management NPS with a consequent impact on human resources.
- 15.2 In that regard, *Local Government New Zealand* submits that by focussing on process, local government will be unable to apply its resources to improving water quality because its resources are being applied to preparing plan changes and variations.
- 15.3 *Local Government New Zealand* submits that before the NPS is introduced that the Minister should develop an implementation package including guidance material and research, to ensure implementation material can be released at the same time as the NPS.
- 15.4 We note that the terms of reference for the Board of Inquiry require it to consider how section 55(2A) of the Act could assist with the implementation of the NPS. We acknowledge that ability to “deem” provisions of the NPS could be a useful mechanism but have found it difficult in the absence of specific provision to comment further in this submission.

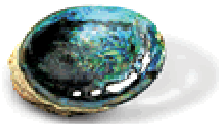
Proposed Freshwater Management NPS

- 15.5 The Proposed Freshwater Management NPS requires that regional and district plans are notified within 40 days of an RPS (or change or variation to an RPS) that gives effect to the Freshwater Management NPS being made operative.
- 15.6 *Local Government New Zealand* submits that the time frames proposed in the Proposed Freshwater Management NPS for the notification by regional and district councils of proposed plans, changes, or variations to give effect to the Freshwater Management NPS and RPSs are unreasonable and unrealistic. Further, *Local Government New Zealand* submits that those time frames do not recognise the hierarchy of planning instruments and provides scope for key freshwater issues to be addressed inconsistently as between regional and district planning instruments.

Preferred approach

- 15.7 *Local Government New Zealand* accepts that local authorities will need to review their plans, to ensure they give effect to the Freshwater Management NPS. *Local Government New Zealand's* preferred approach is that the Freshwater Management NPS provide for reviews of RPSs no later than the next statutory review period, and for RPSs to set time frames for regional and district plans are to be amended to give effect to the RPSs and the Freshwater Management NPS. Details in that regard are set out in Part 3 (Proposed Policy 2).

PART 3: RELIEF SOUGHT: PROPOSED ALTERNATIVE NPS



Local Government New Zealand

te pūtakehi matakōkiri

16. **PROPOSED ALTERNATIVE NPS: INTRODUCTION**

16.1 The purpose of this Part is to set out in detail the relief sought by *Local Government New Zealand*.

16.2 In that regard, without limiting the generality of the fore-going, *Local Government New Zealand* seeks that the Freshwater Management NPS be re-drafted to address the issues raised in this submission. *Local Government New Zealand* suggest that an “alternative NPS” takes the format set out below.

16.3 This Part identifies the key considerations that *Local Government New Zealand* submits a NPS for Freshwater Management should take into account in order to meet freshwater outcomes, including suggested objectives and policies that could be included in an “alternative NPS”. The alternative NPS is intended to act as an example only and should be read in conjunction with Part 2 of this submission.

16.4 This “Alternative NPS” adopts a different approach from the Proposed NPS, focusing on key freshwater management issues and avoiding prescribing the process relating to regional policy statements and regional and district plans. It should be regarded as a starting point

Structure of this Part

16.5 This structure of this Part is as follows:

- (a) The title identifies the key freshwater management issues.
- (b) The paragraphs that follow provide a narrative describing the key matters to be addressed.
- (c) An example objective or policy is provided to address those matters.

17. **PREAMBLE**

17.1 This section will contain a brief overview of the key freshwater issues that face local authorities and the rationale for the NPS.

17.2 The preamble of the Proposed Freshwater Management NPS may be adopted in its entirety or with amendment, or a new preamble may be drafted. We have not attempted to define what the wording of the preamble of the NPS but note some following key principles:

- (a) Water should continue to be managed as a public resource for the good of all New Zealanders.
- (b) The NPS should reinforce and strengthen the linkages between the community based sustainable development approach of the LGA with the sustainable management of natural and physical resources under the RMA.
- (c) The NPS should be enabling, not prescriptive. A NPS should enable local decision making so that individual communities are able to arrive at solutions that meet their needs and aspirations for social, cultural, economic, and environmental wellbeing.
- (d) The NPS recognises that local authorities have a role in reflecting the needs, preferences, and aspirations of their communities as well as the unique characteristics of each region's environment - and therefore a "one-size-fits-all" approach is often not an appropriate policy response.
- (e) The NPS should facilitate and encourage integration and partnerships between government, regional councils and territorial authorities.
- (f) The NPS should focus on the future.
- (g) The NPS should focus the management of water quality and quantity and integration of these factors with land use at a catchment or individual ground water resource level.

18. OBJECTIVES

18.1 The purpose of this section is to set out a series of objectives for freshwater management which *Local Government New Zealand* submits are appropriate to address the issues raised in this submission.

Objective 1 - Integrated management

18.2 Objective 2 of the Proposed NPS only addresses the “integrated management of effects” on freshwater. *Local Government New Zealand* submits that this is too narrowly focussed and fails to take into account the need to provide for the integrated management of the resources themselves. Objective 2 of the Proposed Freshwater Management NPS could be interpreted to exclude considerations related to the interconnected nature of different freshwater resources, such as the linkages between surface and groundwater resources.

18.3 *Local Government New Zealand* submits that a broader approach is required and the purpose of this objective is to require an integrated approach to freshwater management, i.e. to ensure that the inter-relationships between key freshwater management issues, including the inter-connected nature of freshwater resources themselves are considered. This integrated management approach to freshwater management would be an overarching principle for all decision-making and would apply to all persons exercising functions under the RMA and to all decisions made under the RMA.

18.4 The objective is implemented by Proposed Policies 3 and 4.

Example:

Integrated management of freshwater resources that recognises the inter-relationships between key freshwater management issues including the interconnected nature of freshwater resources themselves and freshwater resources and land use.

Objective 2 - Identification of National Values for freshwater resources

18.5 This objective identifies the key freshwater values that are a national priority which relate to both water quality and water quantity. Some of these values are captured in Objectives 3 and 4 of the Proposed Freshwater Management NPS. The intention is that they will provide a “benchmark” against which the uses of freshwater resources can be managed and the values of freshwater resources be identified and protected. *Local Government New Zealand* submits that a

pragmatic approach to the implementation must be adopted, which is the rationale for the use of the term “overall”.

- 18.6 Feedback from local government was that these values should be clearly stated as national values or priorities, but while national values could provide an overall mandate or target it is not possible to develop a “one size” fits all approach. For this reason, proposed Objectives 2, 3 and 4 (and their supporting policies) need to be considered together, as they provide a process for determining the most appropriate management approach based on the values of individual freshwater resources.

Example:

As a matter of national priority, freshwater resources will overall:

- (a) Provide for safe swimming and other recreation in and on the water.
- (b) Allow for the protection, propagation and safe harvesting of fish, shellfish and wildlife and *mahinga kai*.
- (c) Ensure there is sufficient potable water to meet the foreseeable needs of individuals and communities, including future generations.
- (d) Provide sufficient water to ensure the protection of the intrinsic values of ecosystems.

Objective 3 - Outstanding Freshwater Resources

- 18.7 The purpose of this objective is to ensure the protection of the values of outstanding freshwater resources (which may be outstanding at either a national or a regional level). Outstanding freshwater resources are those that demonstrate qualities that reflect matters of national importance set out in section 6 of the RMA. *Local Government New Zealand* submits that they should be identified through the First Schedule process by regional councils and their communities.
- 18.8 While Objective 2, above, relates to the overall desired level of water quality that freshwater resources ought to achieve, outstanding freshwater resources are either likely to have levels of water quality and quantity that exceed the national values identified in Objective 2 or will have other values associated with them that should be protected.
- 18.9 The risk of not including a specific objective in relation to outstanding resources is that Objective 2 of the NPS will become the default for all freshwater resources,

establishing a national direction or mandate, potentially allowing the existing values of outstanding freshwater bodies to be degraded.

18.10 This objective is implemented by Policies 6 and 10.

Example:

The values of outstanding freshwater resources are protected.

Objective 4 - De-graded Freshwater Resources

18.11 The purpose of this objective is to ensure that de-graded freshwater resources are managed so those freshwater resources are improved at a rate or within a time frame that is appropriate to values of that resource. A de-graded freshwater resource may be naturally de-graded or polluted by human agency. The purpose of identifying a specific objective for these freshwater resources is to acknowledge that the national values identified in Objective 2 can be achieved by all freshwater resources, particularly from “day one”.

18.12 Policy 7 sets out a process that requires de-graded freshwater resources to be identified by regional councils, evaluated and managed to meet the values in Objective 2. Regional councils must be able to determine an appropriate and achievable timeframe on a resource by resource basis.

18.13 A small number of freshwater resources may not be able to meet Objective 2 for various reasons, i.e. that they are naturally de-graded. Management of those freshwater resources will need to be determined based on the characteristics and values of that particular freshwater resource.

18.14 This objective is implemented by Policies 6 and 10.

Example:

De-graded freshwater resources are managed so as the water quality and quantity of the freshwater resource is improved over time taking into account the values of that freshwater resource.

Objective 5 - Managing freshwater resources

- 18.15 This objective relates to the water quality of all other freshwater resources (i.e. that are not identified as either outstanding or degraded) and is intended to support and give effect to the national values identified in Objective 2. The purpose of this objective is to ensure that the quality and quantity of those freshwater resources are maintained to a standard that will give effect to Objective 2.
- 18.16 Note that Objective 5 could allow an existing freshwater resource not identified as outstanding to be de-graded, provided they continue to meet Objective 2. This is to prevent some regions being penalised by allowing development in catchments where there is limited development to date, provided that national values are maintained.
- 18.17 This objective is implemented by Policies 8 and 10.

Example:

The maintenance of water quality and quantity of all other freshwater resources (i.e. those not identified as outstanding freshwater resources or degraded freshwater resources) to a standard that will give effect to the national values identified in Objective 2.

Objective 6 - Managing the allocation of freshwater resources

- 18.18 The purpose of this objective is to provide a clear mandate to manage the allocation of freshwater resources (including the review of current allocation regimes) to maintain ecological and other environmental values of freshwater resources, maintain water quality, manage abstractive demands and increase efficiency of use of freshwater resources.
- 18.19 This objective provides a “hook” for regional councils to address over allocation issues in catchments where that is required. It also signals the importance of ensuring that domestic and municipal supply is considered and catered for when managing allocations.
- 18.20 This objective is implemented by Policies 10, 12 and 14. Further policies may be required to be developed to implement this objective.

Example:

Demands (including social, economic and cultural demands) for fresh water are managed so that:

- (a) Sufficient fresh water is available for domestic and municipal needs.
- (b) Environmental flows are maintained.
- (c) Fresh water is used efficiently.
- (d) Fresh water supply is resilient to the biophysical effects of climate change.

Objective 7 - Priority of water use

18.21 The purpose of this objective is to ensure that demands for freshwater resources are managed in such a way that ensures that there is sufficient water available for municipal supply (subject to appropriate conservation and demand management) as a matter of national priority and that other competing demands are prioritised having regard to the circumstances in each region.

18.22 The objective establishes the principle that communities can establish priorities for allocation of water. It is intended that communities, when determining other priorities for water use, will consider the impact of the likely demand for domestic and municipal water supply on the social, economic and cultural wellbeing of their community.

18.23 This objective is implemented by Policy 12, which provides criteria for setting community priorities for water allocation.

Example

As a matter of national priority, freshwater takes for the purposes of domestic and municipal supply (subject to appropriate conservation and demand management) are prioritised over other uses of freshwater resources, and other uses are prioritised as appropriate, in order to provide for the social, economic and cultural wellbeing of people and communities.

Objective 8 - Efficient use and allocation of water

18.24 The purpose of this objective is to ensure and promote the efficient use of freshwater resources. This has benefits in terms of water allocation and demand

for freshwater and assist in managing water quality. This objective is similar to Objective 7 of the Proposed NPS.

18.25 This objective is implemented by Policies 13 and 14.

Example:

Allocated fresh water is used efficiently and, in particular:

- (a) Wastage is avoided.
- (b) Contamination of freshwater resources is minimised.
- (c) Opportunities to increase benefits from the use of fresh water are facilitated.

19. POLICIES

- 19.1 The purpose of this section is to set out a series of policies relating to freshwater management that *Local Government New Zealand* submits will address the issues raised in this submission.

Implementation of the NPS

Policy 1 - Review of the NPS

- 19.2 This policy would require the Minister to review the effectiveness of the Freshwater Management NPS within ten years and determine whether a review is required. This policy reflects Policy 9 of the Proposed NPS. The Minister has core responsibility for obtaining information to undertake the review, including monitoring. We note that regional councils are required to undertake monitoring under the RMA, and acknowledge that the Minister may use that resource in part to assist with review of the Freshwater Management NPS.

Example:

The Minister for the Environment will seek an independent review of the implementation and effectiveness of this National Policy Statement no later than 10 years after it comes into force and shall then consider the need to review, change or revoke this statement. Collection of data to inform this review will begin at least two years prior to the review.

Policy 2 - Amendment of regional policy statements and relevant plans

- 19.3 This policy requires local authorities to audit RPSs and relevant plans and undertake a review of the relevant plans and policy statements, if necessary, to give effect to the NPS. The policy provides for RPSs to be reviewed as soon as practicable, but no later than the next statutory review date. The policy requires RPSs to set time frames for regional and district plans to give effect to the NPS and the RPS.
- 19.4 There are a number of NPSs currently being considered by Boards of Inquiry. This policy acknowledges that some flexibility around timing and process for the implementation of those national instruments is required to ensure wise use of capacity and capability within the local government sector. *Local Government New Zealand's* view is that regional councils are in the best position to make decisions regarding the most efficient allocation of the limited resource required to undertake a review.

19.5 *Local Government New Zealand* also notes that there are a number of examples around the country where regional councils have or propose a policy that will address the issues in this NPS. It is essential that RPSs are reviewed first (if necessary), then regional plans, and then district plans are reviewed (if necessary) to ensure that the plans lower in the hierarchy are consistent with the plans and policy statements higher in the hierarchy. A key concern of local authorities is that there is no duplication of roles between regional councils and territorial authorities.

19.6 It is proposed that RPSs will set out the roles of the regional councils and territorial authorities in relation to freshwater management in the region. This approach recognises the diversity of issues within and between regions and allows local authorities to allocate roles and responsibilities in a way that is appropriate to the issue and region.

Example:

- (a) Regional authorities shall amend regional policy statements as necessary to give effect to this NPS as soon as practicable and no later than the date on which the next statutory review is required.
- (b) Regional policy statements shall identify time frames within which regional plans and district plans are to be amended to give effect to this National Policy Statement and the relevant regional policy statement.
- (c) Regional policy statements will set out the roles of regional councils and territorial authorities with respect to freshwater management issues in the region.

Policy 3 - Resource consents and notices of requirement

19.7 This policy requires consent authorities to have regard to the objectives and policies of the NPS when considering resource consent applications and notices of requirement. The policy requires consent authorities to consider including conditions on resource consents and recommending conditions on notices of requirement in order to achieve the objectives of the NPS.

19.8 This policy does not require councils to impose conditions, but to consider imposing them where appropriate. Other methods may also be utilised to give effect to the NPS, for example resource rentals and environmental offsets. We acknowledge that the Act requires that local authorities carry the actions identified in this policy and it has been included on the basis of a “belts and braces” approach.

19.9 This policy is similar to Policy 6 of the Proposed Freshwater Management NPS.

Example:

When considering resource consent applications and notices of requirement, local authorities shall:

- (a) Have regard to the objectives and policies of this National Policy Statement.
- (b) Consider whether it would be appropriate to impose (in the case of a resource consent) or recommend (in the case of a notice of requirement) conditions for the purposes of achieving the objectives of this National Policy Statement and, if so, impose or recommend appropriate conditions.
- (c) Consider and, if appropriate, implement other available methods which will achieve the objectives of this National Policy Statement.

General policies

Policy 4 - Integrated Management

[Implements Objective 1]

19.10 The purpose of this policy is to require an integrated approach to decision making at all levels and, in that regard, implements Objective 1. The policy sets out the key freshwater management issues that need to be considered when implementing such an approach, for example, the inter-relationship between freshwater resources, land use and freshwater and so on.

Example:

All persons exercising functions under the Act shall adopt an integrated approach to the management of freshwater resources. Such an approach will include having regard, as a minimum, to the following:

- (a) The interrelated nature of freshwater resources, including surface water resources (i.e. rivers, lakes and wetlands) and groundwater resources.
- (b) The integration between land use and freshwater quality and quantity.
- (c) Social, environmental and cultural values with respect to freshwater resources.
- (d) The biophysical composition and limits of freshwater resources.
- (e) The effects of spatial and temporal variability on the availability of freshwater resources.

- (f) Social, economic and environmental effects of freshwater management.

Policy 5 – Characteristics of special value to tangata whenua

[Implements Objective 1]

- 19.11 This policy requires local authorities to work with Tangata Whenua to identify characteristics of freshwater resources of special value to Tangata Whenua and to provide for the use, development and protection of those characteristics. The policy reflects the policy contained in the Proposed NZCPS.
- 19.12 The policy focuses on the values that are special to Tangata Whenua, to achieve an outcome rather than a process that local authorities must follow, i.e. in terms of identifying iwi and hapu etc. *Local Government New Zealand* is concerned that Maori and local government may not have the capacity and capability to comply with the requirements of the Proposed Freshwater Management NPS. The reference to Tangata Whenua in this policy reflects the requirement in the Act, and acknowledges that local authorities and Maori have developed or may develop different processes appropriate to their circumstance for engaging on issues related to Tangata Whenua.

Example:

Local authorities shall work with tangata whenua, in accordance with tikanga Maori, to identify characteristics of freshwater resources that are of special value to tangata whenua. Provision shall be made, in accordance with tikanga Maori, for:

- (a) As far as practicable, the maintenance or enhancement of tangata whenua values.
- (b) The appropriate use, development and protection of these characteristics.

Policies relating to water quality and allocation

Policy 6 - Outstanding freshwater resources

[Implements Objectives 1, 2 and 3]

- 19.13 This policy requires regional councils, in consultation with their communities via the First Schedule process, to identify outstanding freshwater resources and the values associated with them, and to protect those values.
- 19.14 *Local Government New Zealand* notes that there appear to be three options for determining what outstanding freshwater resources are:
- (a) Central government in consultation with local government develops a list of nationally outstanding freshwater resources.
 - (b) The criteria in section 6 of the Act (and case law) are applied by regions to determine what are the regional outstanding freshwater bodies
 - (c) The Freshwater Management NPS includes criteria for the identification of outstanding freshwater resources.
- 19.15 The example policy below reflects option 3. This is a preferred approach because it provides some certainty regarding the assessment factors, but enables communities to identify regionally outstanding water bodies that are important to them or may not be included in a national list. It is possible that this process could be supported by national list of outstanding freshwater resources, but *Local Government New Zealand* would only support this process if carried in consultation with communities.

Example:

- (a) Regional councils shall identify the outstanding freshwater resources in the region, and the values associated with those freshwater resources, in their regional plan.
- (b) Outstanding freshwater resources shall be identified by reference to the following criteria:
 - (i) The presence of significant indigenous vegetation and/or significant habitats of indigenous fauna.
 - (ii) The presence or association of the freshwater resource with areas of outstanding natural character.
 - (iii) Whether the freshwater resource has quality and/or quantity (levels or flows) characteristics that makes the freshwater resource outstanding for economic or social (including

	recreational) values.
(iv)	Whether the freshwater resource is of significance to tangata whenua.
(v)	Whether the freshwater resource is a principal source of water to aquifers/ lakes/ estuaries/wetlands.
(c)	Regional councils shall adopt policies and methods (in addition to the policies and methods identified in Policy 10) for the purposes of protecting outstanding freshwater resources in the region.

Policy 7 - Degraded freshwater resources

[Implements Objective 3 and 4]

- 19.16 The purpose of this policy is to require regional councils, in consultation with their communities via the First Schedule process, to identify degraded freshwater resources. The values of freshwater resources relate to both water quality and water quantity. The objective and policy acknowledge that freshwater resources should be enhanced so that they will meet the national values in Objective 2, but that time frames for achieving that outcome must take into account the characteristics particular to the freshwater resource. The exception is “naturally degraded” freshwater resources which the policy acknowledges cannot meet the national values in Objective 2.
- 19.17 There are also freshwater resources that are currently managed for values that either conflict or are not aligned with the national values in Objective 2. Some examples include urban rivers and streams that have considerable amenity value but cannot meet the expectations for water quality reflected in Objective 2 or catchments that are managed exclusively for water supply purposes. While a pragmatic approach could be to provide an exception for these freshwater resources, two key issues arise:
- (a) The exemption would need to be applied equitably; and
 - (b) An exception may create an opportunity to avoid improving degraded freshwater resources.
- 19.18 When a de-graded freshwater resource has been identified, the policy provides for regional councils to establish a process for managing those freshwater resources or time frames for achieving the national values in Objective 2. This reflects the fact that freshwater resources will be at various levels of degradation and will need to be prioritised (particularly due to limited resources).

19.19 In particular, the policy provides for those time frames and priorities to take a range of factors into account, including the costs of removing contamination sources where affected by stormwater, costs of modifying alternative land uses, time lags associated with hydrological processes etc, and the purposes for which the freshwater resource is managed. Those circumstances are to be balanced against the values of the particular freshwater resource.

19.20 It is intended that the policy give a strong indication that, in such circumstances, it may be appropriate that longer time frames are applied (depending on the nature of the values of the resource). It is expected that these will be developed by regional councils, in consultation with their communities via the First Schedule process.

Example:

- (a) Regional councils shall identify the de-graded freshwater resources in the region, and the values (including potential values) associated with the freshwater resource, in the regional plan.
- (b) Where a freshwater resource is:
 - (i) De-graded due to naturally occurring contaminants which cannot be reasonably remediated; or
 - (ii) Ephemeral or subject to intermittent flow conditions, where these conditions are naturally occurringthat freshwater resource shall be identified in the regional plan as “naturally de-graded”.
- (c) Regional councils shall adopt policies and methods (in addition to the policies and methods identified in Policy 10) for the purposes of enhancing de-graded freshwater resources to meet Objective 2, except those freshwater resources identified as “naturally degraded”, in the region.
- (d) Regional councils shall set priorities and time frames for enhancing the degraded freshwater resources except freshwater resources identified as “naturally de-graded”, of the region. Those priorities and time frames shall take into account, as a minimum:
 - (i) In the case of a freshwater resource in an urban catchment affected by stormwater discharges, including stormwater contaminated by sewage, the costs of removing or remediating the contamination sources.
 - (ii) The impact of any time delay in the operation of natural hydrological or ecosystem processes.
 - (iii) The purposes for which the freshwater resource is managed.
 - (iv) The costs of modifying adjoining land use practices to reduce the pollution of the particular fresh water resource.

- (v) The identified values of the freshwater resource.

Policy 8 - Other freshwater resources

- 19.21 The purpose of this policy is to require regional councils, in consultation with their communities via the First Schedule process, to identify the values associated with all other freshwater resources (i.e. those that are not identified as either outstanding or degraded freshwater resources) and provide for the maintenance of water quality in accordance with the national values set out in Objective 2, with respect to those freshwater resources.
- 19.22 Note that it is not intended to require regional councils to identify values of all freshwater resources on “day one”, but that time frames for identification of values would be left up to regional councils. It is also important to note that it is not intended that councils identify the values for every individual freshwater. The intention is that they are able to use discretion to identify or classify freshwater resources to enable effective and efficient management of those resources (having regard to available resources). This means, for example that they may classify the values of freshwater resources on a catchment basis.

Example:

- (a) Regional councils shall identify the values associated with other freshwater resources in the region (i.e. those not identified as outstanding or degraded freshwater resources) in the regional plan.
- (b) Regional councils shall adopt policies and methods for the purposes of giving effect to national values identified in Objective 2 associated with those freshwater resources.

Policy 9 - “At risk” catchments.

[Implements Objectives 3, 4, 5 and 6]

- 19.23 This policy requires regional councils to identify catchments which are “at risk” of failing to achieve the objective related to that freshwater resource. In other words, an outstanding freshwater resource would be considered “at risk” if the values identified as outstanding were at risk of being degraded by, for example, land use impacts. Other freshwater resources (i.e. not outstanding or degraded) will be “at risk” if water quality is not being maintained so as to meet the national values set out in Objective 2.

19.24 The policy requires regional councils to prioritise the management of “at risk” catchments for the purposes of achieving the relevant objectives that relate to that catchment and the values of the freshwater resources. We note that the implementation of those objectives will be subject to the First Schedule process and this limits the ability of councils to respond quickly. This issue may only be able to be addressed through a NES or amendments to the Act.

19.25 The policy sets out criteria that may be used to assist to identify at risk catchments.

Example:

- (a) Regional councils shall identify “at risk” catchments in their region in their regional plan. “At risk” catchments are those catchments that are at risk of failing to meet the objectives relevant to that catchment. “At risk” catchments shall be identified by evaluating, as a minimum, the following:
 - (i) The uses and values of the resource.
 - (ii) Monitoring information that shows trends in resource condition.
 - (iii) The extent to which the resource is already under pressure.
 - (iv) Changes in those pressures on a water resource, e.g. land use intensification, urban development, changing land uses (forestry, arable, or dairying for example).
 - (v) The condition of the catchment, including erosion rates and the condition of riparian margins.
 - (vi) The knowledge of the resource, including how accurately it can be modelled (e.g. for groundwater aquifers), the sources of contaminants, and for takes the actual (versus consented) volumes taken.
 - (vii) The extent to which the resource is managed by current controls on resource use.
 - (viii) The actions underway to improve or restore the resource, or to halt any decline in resource quality.
 - (ix) Existing biosecurity threats to the resource.
 - (x) The extent to which climate change may affect the resource.
- (b) Regional councils shall adopt policies and methods, including setting priorities for action, for the purpose of addressing degradation of “at risk” catchments.

Policy 10 - Environmental flows and water levels and freshwater quality standards

19.26 The purpose of this policy is to provide local authorities with a mandate to:

- (a) Avoid over allocation of freshwater resources.
- (b) Avoid cumulative effects on freshwater resources.
- (c) Avoid further degradation of “at risk” catchments.

19.27 The policy requires regional councils to set environmental flows and levels and freshwater quality standards for each freshwater resource which are based upon the values of that resource and the current quality of that resource. The policy then requires regional councils to consider and implement mechanisms to ensure that the environmental flows and levels and freshwater quality standards are not breached. This policy provides the “hook” for regional authorities to address:

- (a) Cumulative effects, by sending a strong signal that the flows, levels and standards should not be breached; and
- (b) Over-allocation, by indicating that where flows, levels and standards are breached, they can be rectified.

Example:

- (a) Regional councils shall, in regional plans, adopt:
 - (i) Freshwater Quality Standards.
 - (ii) Environmental Flows and Levels.for the purposes of
 - (iii) Protecting values of outstanding freshwater resources.
 - (iv) Enhancing values of degraded freshwater resources.
 - (v) Managing all other freshwater resources to meet national values.
- (b) Regional councils shall adopt policies and methods for the purposes of ensuring that the Freshwater Quality Standards and Environmental Flows and Levels appropriate to each freshwater resource are not breached and, if they are, can be rectified.

Policy 11 - Decision making under uncertainty

- 19.28 The purpose of this policy is to provide guidance to local authorities in the event that they are required to make a decision where there is scientific uncertainty or a lack of information with respect to an aspect of freshwater management.
- 19.29 The purpose of the policy is to acknowledge uncertainty in decision-making, and identify the potential actions for decision-makers, including the adoption of the precautionary approach and “adaptive management” techniques. The policy sets out a process to follow in those circumstances.

Example:

When making decisions in relation to freshwater resources where there is scientific uncertainty or a lack of information about the nature of the freshwater resource and/or the effects of the take or use of that resource, decision makers shall:

- (a) Not use the absence of, or any uncertainty in, that information as a reason for postponing or failing to take decisions.
- (b) Adopt a precautionary approach towards proposed activities, particularly those whose effects are as yet unknown or are little understood (which may include the use of prohibited activity status in plans until further information is gained).
- (c) Be cautious when information is uncertain, unreliable or inadequate, which may include requiring the gathering of additional information to support decision making.
- (d) Impose conditions on resource consents that will enable ongoing assessment of the effects of the activity on freshwater resources and review of conditions to address any adverse effects that arise.

Policy 12 - Prioritising demands for freshwater resources.

[Implements Objective 5, 6 and 7]

- 19.30 This policy requires regional councils to provide for domestic and municipal supply (subject to water conservation and demand management) as priority over competing demands. The policy also requires regional councils to establish priority for other demands as appropriate for each region. The policy could require (as set out in below) that priorities be established in accordance with the criteria set out in the policy.
- 19.31 It is anticipated that domestic and municipal supply would include all municipal functions and would be so defined in the NPS. This approach has been adopted

because it is considered that domestic and municipal supply is fundamental to the health and well-being of people and communities. Defining and prioritising domestic and municipal supply will ensure the security of supply to communities and avoid the need for litigation with respect to such priority on a region by region basis.

19.32 It is anticipated that the considerations set out in the policy for determining priorities will assist regional councils to determine what other uses should have priority and what water is available to be allocated taking into account the circumstances of the freshwater resource and the surrounding land uses. It is not intended that the NPS identify priorities (other than domestic and municipal supply), our view is the community should determine those priorities.

Example:

- (a) Regional councils shall, in their regional plans, make provision for domestic and municipal water supply to have priority over other uses of freshwater resources (subject to appropriate water conservation and demand management) and adopt objectives, policies and methods for that purpose.
- (b) Regional councils may, in their regional plans, identify priorities for other uses (subject to appropriate water conservation and demand management) and adopt objectives, policies and methods for the purposes of establishing those priorities, taking into account the following considerations:
 - (i) The availability of water to meet the reasonably foreseeable domestic and municipal water supply requirements of individuals and communities and animal drinking water requirements.
 - (iii) Sufficient water to meet in-stream requirements during periods of water shortage.
 - (iv) The assimilative capacity of water bodies.
 - (v) Maintenance of the benefits derived from the generation of renewable energy.

Policy 13 - Infrastructure development.

[Implements Objective 6 and 7]

19.33 The purpose of this policy is to require local authorities to develop planning provisions relating to the development, co-ordination and sequencing of infrastructure in order to ensure the efficient use of water. Note that in regard to this policy, the role of regional council relates to the strategic integration of infrastructure through objectives and policies and methods (section 30(1)(gb)) and directed at RPSs.

19.34 The policy is also intended to address issues relating to contribution of infrastructure planning to minimising the adverse effects on water quality and to encourage appropriate development, co-ordination and sequencing of infrastructure in that regard.

Example:

- (a) Regional councils shall, in their regional policy statements, guide territorial authorities with respect to the development, co-ordination and sequencing of infrastructure for the purposes of:
 - (i) Ensuring efficient use of freshwater resources.
 - (ii) Addressing potential impacts on water quantity and quality.
- (b) Territorial authorities shall, in their district plans, adopt objectives, policies and methods for the purposes of developing, co-ordinating and sequencing infrastructure in order to:
 - (i) Ensure efficient use of freshwater resources.
 - (ii) Address potential impacts on water quantity and quality.

Policy 14 - Water conservation and demand management

[Implements Objective 6 and 7]

19.35 The purpose of this policy is to require local authorities to develop planning provisions relating to the implementation of water conservation and demand management practices in order to ensure efficient use of water.

19.36 This is similar to the requirement in the Proposed Freshwater Management NPS that water takes and uses be undertaken in accordance with industry good practice. Local government have expressed concern with the term “industry good

practice” as it is not defined and appears to be left to the industry using the water to define and apply.

- 19.37 Water conservation and demand management is term which describes the outcomes sought (i.e. conservation of water and management of the demand for water) and it is appropriate that all water takers and users consider where efficiencies can be gained via conservation and demand management practices.

Example:

Regional councils shall, in their regional plans, adopt objectives, policies and methods for the purposes of ensuring that water takes and uses are undertaken in accordance with appropriate water conservation and demand management practices.

20. GLOSSARY

20.1 *Local Government New Zealand's* approach has been to avoid jargon and to use where possible terms that are consistent with the RMA. However, there are some key terms where the NPS should provide definitions, including, for example:

- (a) Allocated water - which means the total quantum of water that can be allocated from a resource for consumptive use including both existing and potential authorised used. It includes use for reasonable stock, firefighting and domestic needs in terms of section 14(3) of the RMA.
- (b) Domestic and municipal supply - which means water used for the purposes of human drinking and sanitation needs (where ever they arise), individual household use and for the purpose of meeting the general responsibilities of municipal water supply authorities.
- (c) Freshwater resources - which includes both ground water and surface water.
- (d) Mahinga Kai - which means the customary gathering of food and natural materials and the places where these resources are gathered.
- (e) Safe swimming - which means Class CR Water (being water managed for contact recreation purposes) as defined in clause 5 of Schedule 3 RMA 1991.