

Proposed National Policy Statement for Freshwater Management

Preamble

All New Zealanders have a common interest in ensuring that the country's Fresh Water resources are managed wisely and effectively, to provide for the present and future environmental, cultural, social and economic well-being of New Zealand. However, there is widespread evidence to suggest that this goal is not being achieved at present.

In particular, it is apparent that water quality remains poor in many catchments, both urban and rural, and that it is currently declining in many lowland catchments dominated by agricultural activities. Management of point source discharges has greatly improved over the last half century, and while there is scope for some further improvement, the main opportunities for restoring water quality lie in reducing non-point source discharges from land use activities.

The decline in water quality commonly reported by regional councils is linked to land use practices and cannot be reversed without significant changes to those practices. It has long been accepted in principle that property rights in land in New Zealand do not confer the right to discharge contaminants in a manner that damages water bodies, which are collectively owned by, and are managed on behalf of, all New Zealanders. The challenge is to achieve practical forms of protection for collectively held property rights in water, and to provide accountability and means of enforcement of these rights within the framework of the Resource Management Act.

The nub of decision-making about water, as for other resources, is contained in section 5 of the Act, which sets out the purpose of the Act, and embodies two parts. The first part enables people and communities to provide for their well-being in broad terms. The second part addresses the environmental constraints which should apply to that. The two parts are linked by the word 'while,' and the section should be read as a whole.

The section has been interpreted by the Environment Court as signalling the need for an overall balanced judgement. It implies that a sense of proportion and of reasonableness should contribute to the balancing of the two parts of section 5. It is not desirable however, that the concept of striking a balance should lead in practice to a very wide and open-ended discretion for decision-making authorities under the Act. Wide discretions lead to uncertainty for both applicants and submitters; they provide incentives for unnecessary dispute and litigation; which in turn can lead to unwanted cost and delay in decision-making processes. It is important that areas of discretion are narrowed and greater certainty is provided for participants in the Act's processes.

The purpose of this National Policy Statement is therefore to establish in respect of Fresh Water management, specific objectives and policies which address the matters listed in section 5(2) (a), (b), and (c). It is not necessary in this Statement to re-state matters that are already provided for in the Act. The objectives and policies set out here are to be translated into specific standards for particular water bodies by regional councils, in a manner which reflects the sensitivities of those water bodies to contaminants in light of the prevailing environmental conditions in the locality. Once these specific standards have been established by regional councils, it is the Government's intention that activities should be enabled to the extent that their effects meet those standards, subject to conformity with the statutory provisions as a whole. The result should be a greater clarity and certainty about the Act's provisions.

The major potential difficulty with this approach is a familiar one internationally and in New Zealand: it is that compliance with water quality standards, especially in lake catchments, can be relatively costly for established farming activities, potentially impacting on farm viability to an extent that makes compliance unfeasible for some high intensity land uses. A key part of this national policy statement is therefore, to establish a procedure under which decisions can be made about extended transition periods where necessary to attain water quality objectives, and about making available appropriate subdivision rights and/or public funding to assist landowners, either to substantially modify their land use practices or to remove high intensity land use practices from the catchment. Such an approach is already being employed in the Lake Taupo catchment.

This National Policy Statement envisages that the role of central Government in promoting better water quality in New Zealand is three-fold: (a) providing clear objectives and policies to local government; (b) establishing a capacity for monitoring and reporting on local government's performance in achieving these objectives and policies; and (c) where the costs of achieving the objectives and implementing the policies would be too onerous to be carried by resource users and local government, to provide for a contribution towards those costs.

Purpose

The purpose of this National Policy Statement is to state objectives and policies which address the matters in section 5(2) (a), (b) and (c) in relation to the management of Fresh Water.

Objectives

Objective 1 – Sustaining the potential of freshwater to meet the reasonably foreseeable needs of future generations

To sustain the potential of Fresh Water to meet the reasonably foreseeable needs of future generations by:

- (a) Ensuring that there is no further degradation of groundwaters or surface Fresh Waters beyond current levels by recognising and, wherever attainable, reversing any significant and sustained upward trend in the concentration of any pollutant;
- (b) Establishing standards and undertaking management actions to improve water quality so that, as soon as practicable and no later than 31 December 2015, the quality of surface Fresh Waters is suitable for safe swimming and other recreation in and on the water, and for the protection, propagation and safe harvesting of fish, shellfish, wildlife and mahinga kai;
- (c) Ensuring that Fresh Water flowing into the Coastal Marine Area is of a quality suitable to meet any objectives and policies established for that Area.

Objective 2 – Safeguarding the life-supporting capacity of Fresh Waters

To safeguard the life-supporting capacity of Fresh Waters by:

- (a) Identifying the expected biodiversity and life-supporting characteristics of surface Fresh Waters, based on relatively unmodified regional reference sites;
- (b) Establishing, by 31 December 2010, standards for the life-supporting capacity of all surface Fresh Waters, based on restoring, to the greatest extent practically attainable, the biodiversity which occurs at the relevant regional reference sites;
- (c) Wherever attainable, managing surface Fresh Waters and groundwaters, and the land uses which impact on them, to achieve the standards as soon as reasonably practicable and no later than 31 December 2015.

Objective 3 – Addressing adverse effects of activities on Fresh Waters

To avoid, remedy or mitigate any adverse effects of activities on Fresh Waters by:

- (a) Managing permits to take, use and discharge water so as to give effect to the objectives and policies set out in this Statement;
- (b) Ensuring that the effects of existing land uses and of land use development, and the associated diffuse discharges of contaminants, including those from livestock, are managed so as to give effect to the objectives and policies set out in this Statement;
- (c) Ensuring that all decisions about water consider quality and quantity of allocation in a co-ordinated manner, so that allocation, including the setting of environmental flows, is managed so as to give effect to the objectives and policies for Fresh Water quality set out in this Statement.

Objective 4 – Continuous Improvement of water quality

To ensure that regional councils have the power to set water quality standards above the standards set in this Statement if an increased standard reflects community expectations and to ensure that landowners and persons whose activities discharge contaminants are continuously encouraged to improve water quality above the standards set in this Statement.

Objective 5 – Addressing non-attainability of quality standards

To ensure that where a particular water body cannot attain objectives 1 or 2 by reason of the high cost of restoring water quality, (a) the effects of land-use development and discharges of contaminants are controlled to avoid further degradation of the quality of that water body; and (b) a procedure is established for consideration by public authorities and by landowners and persons whose activities discharge contaminants into that water body, of a basis for sharing the costs of restoration of that water body over time.

Objective 6 – Default environmental flows and levels

To ensure that, until any National Environmental Standard becomes operative, flow regimes in any water body do not fall below the mean annual flow rate, and that water takes are not likely to either reduce the mean annual flow from natural groundwater springs flowing from the groundwater, or reduce the mean level of the groundwater as measured over a five year period.

Objective 7 – Information and precaution

To ensure that a cautious approach is taken to making policy and determining consents which:

- (a) Seeks and takes account of all relevant available information;
- (b) Takes account of the foreseeable, cumulative adverse effects of activities including their potential growth over time;
- (c) Wherever practicable, expresses objectives for managing such effects in terms of quantitative limits for impacts on Fresh Waters;
- (d) Identifies areas of scientific uncertainty or ignorance about the nature or scope of potential adverse effects;
- (e) Identifies where significant adverse effects could arise which would be difficult or costly to reverse; and
- (f) Having regard to (d) and (e) ensures that the associated risk of significant adverse effects on Fresh Waters which are difficult or costly to reverse is avoided.

Objective 8 - Iwi roles and Tangata Whenua Values and Interests

To ensure that iwi are involved, and Tangata Whenua Values and Interests are identified and reflected, in the management of Freshwater Resources.

Objective 9 – Encouraging negotiated implementation

To encourage stakeholder-negotiated drafting of plan objectives, policies and rules by regional councils for achieving the objectives and policies of this Statement.

Objective 10 – Ensuring effective monitoring and reporting

To ensure that regional councils and territorial authorities monitor and report on the matters specified in Objectives 1–6, and that the Ministry for the Environment monitors and reports on the performance of regional and local government bodies in implementing these matters.

Policies as to regional policy statements

Policy 1

By the second anniversary of the date of commencement of this National Policy Statement, every regional council must notify, in accordance with Schedule 1 of the Act, a proposed regional policy statement or variation to a proposed regional policy statement or change to its operative regional policy statement in order that as soon as practicable thereafter every regional policy statement specifies objectives, policies and methods which implement Objectives 1 to 6 by–

- (a) Involving stakeholders in a negotiated rule-making procedure for resolving the major features of the regional policy statement, in a manner consistent with the objectives and policies of this Statement. Under this procedure, councils should empower relevant stakeholders in a twelve-month exercise aimed at achieving a consensus on as many matters as possible, on the basis that, on those matters where a consensus is achieved, the council will publicly notify the result; and
- (b) Identifying 2000 to 2004 inclusive as the baseline years for measuring degradation of Fresh Water bodies from current levels for the purposes of Objective 1(a); or where data is not available for those years, provide for another suitable method for establishing water quality baselines, including prioritising any necessary monitoring activities; and
- (c) Identifying mahinga kai sites and other tangata whenua values and interests in respect of all Fresh Waters of the region; and
- (d) Identifying each degraded Fresh Water body throughout the region, and the Notable Values (including potential values) associated with these;

- (e) Identifying as “naturally degraded” any Fresh Water bodies that cannot be managed to achieve Objectives 2 or 3 because of:
 - (i) Naturally occurring contaminants which cannot reasonably be remediated; or
 - (ii) Ephemeral or intermittent flow conditions, where these conditions are naturally occurring; but excluding any wetlands which could reasonably be protected from livestock access;
- (f) Determining priorities for management among all water bodies not identified as “naturally degraded”, and establish dates for when regional plans will:
 - (i) Set Fresh Water Quality Standards and environmental flows and levels for all Fresh Waters of the region; and
 - (ii) Identify any Fresh Water bodies having Protracted Polluted Status; and
 - (iii) Direct local authorities as to policies and methods to be applied in district plans to implement regional and national policy statements and plans.
- (g) Directing regional and district plans (including considerations for the determination of resource consent applications) in relation to the recognition of tangata whenua values and interests in respect of all Fresh Waters of the region; and
- (h) Directing regional plans (including considerations for the determination of resource consent applications) to restrict existing takes, uses, damming and diversion of Fresh Water in order to sustain Notable Values and non-consumptive iwi and tangata whenua values and interests in times of low flow; and
- (i) Directing regional and district plans (including considerations for the determination of resource consent applications and notices of requirement) to effectively manage land-use and discharges of contaminants to control the adverse effects of the discharge of contaminants into Fresh Water or onto or into land in circumstances where contaminants may enter Fresh Water; and
- (j) Directing regional and district plans (including considerations for the determination of resource consent applications and notices of requirement) to ensure integrated management of the effects of land-use by controlling adverse effects (including associated discharges of contaminants) on the quality and available quantity of Fresh Waters.

Policies as to regional plans

Policy 2

Every regional council must –

- (a) By the date or dates specified in the regional policy statement, notify a proposed regional plan, change or variation, to set Fresh Water Quality Standards and environmental flows and levels for the Fresh Waters of

- the region to give effect to the regional policy statement in relation to the matters in Policies 1(e) to (j); and
- (b) By no later than 40 working days following the date a regional policy statement or change notified pursuant to Policy 1 is made operative, every regional council must notify a proposed regional plan, change or variation to include rules to achieve the following:
 - (i) Require that all discharge permits affecting Fresh Waters granted after the date of commencement of this Statement include conditions for –
 - (A) Protection against degradation of the quality of Fresh Water (including through the management of activities giving rise to stormwater discharges); and
 - (B) Sustainable management of demands on Fresh Water in a manner which has regard to available supply of Fresh Water and adverse effects, both individual and cumulative; and
 - (C) Integrated management of the effects of land-use and discharges of contaminants on the quality and available quantity of Fresh Waters;
 - (ii) Require effective monitoring and reporting of the quality and quantity of Fresh Waters.
 - (c) Identify, in regional plans promulgated under Policy 2(a), any Fresh Water bodies which should be given Protracted Polluted Status; and
 - (d) In respect of water bodies identified as having Protracted Polluted Status,” either:
 - (i) In the case of severely modified Fresh Water ecosystems which on the basis of existing scientific knowledge would be intractably difficult and costly to restore to their original state, defer for consideration in the next regional planning period; or
 - (ii) In the case of other water bodies, on establish a negotiation process involving relevant public authorities and representatives of landowners in the catchment, in order to determine an appropriate transition period and sharing of the costs of restoring that water body.

Policies as to the preparation of policy statements and plans

Policy 3

When preparing a regional policy statement or variation or change to give effect to Policy 1 and when preparing a regional plan or variation or change to give effect to Policy 2, every regional council must consider the following:

- (a) The Notable Values of each Fresh Water body;
- (b) The sensitivity of each Fresh Water body and its Notable Values to adverse effects including effects of land-use and the discharge of contaminants;
- (c) The needs of communities, and of primary and secondary industry including potential new entrants, for sustainable Fresh Water supply;
- (d) The importance of sustainable Fresh Waters for the integrity of New Zealand products in the global marketplace;

- (e) Tangata whenua values and interests;
- (f) The need to protect the life supporting capacity of the Fresh Waters including their ecological values;
- (g) The need to protect opportunities for safe swimming and other recreation in and on the water;
- (h) The need to protect opportunities for the protection, propagation and safe harvesting of fish, shellfish, wildlife and mahinga kai;
- (i) The need to ensure Fresh Water flowing into the Coastal Marine Area meets objectives and policies established for that Area.

Policy as to certain consents and designations

Policy 4

Without limiting Policies 1 to 3, this Statement will be achieved also through the inclusion, unless inappropriate, of conditions on any relevant resource consents granted and recommendations on designations confirmed in respect of the following:

- (a) Efficient consumptive use of Fresh Water (including where appropriate, the return of Fresh Water to Fresh Water bodies);
- (b) Protection against degradation of the quality of Fresh Waters (including through the management of activities giving rise to stormwater discharges);
- (c) Sustainable management of demands on Fresh Water in a manner which has regard to available supply of Fresh Water and adverse effects, both individual and cumulative;
- (d) Integrated management of the effects of land-use and discharges of contaminants on the quality and available quantity of Fresh Waters; and
- (e) Monitoring and reporting on matters relating to paragraphs (a) to (d).

Policy as to Degraded Fresh Waters

Policy 5

Until operative district and regional plan provisions are in place to implement Policies 1-4, the following provisions shall be incorporated into all district and regional plans:

- (a) All land use intensification activities, in catchments with Degraded Fresh water, shall require a notified resource consent.
 - (i) Without limiting the exercise of its discretion, the Council shall have regard to the following assessment, and any other relevant provisions of the Plan, and the relevant matters set out in section 104 of the Act:
 - (A) The ability to avoid the overall degradation of the Fresh Water;

- (B) Any mitigation measures employed to offset the adverse effects of the activity, and the viability and effectiveness of those measures; and
 - (C) The extent that the landowner is willing to work collaboratively with the Council in order to determine an appropriate process for improving the quality of the water body.
- (b) An interim flow regime shall apply to all Fresh Water waterways which provides that permits to take or divert water shall not be issued if their effect is to reduce flows below the mean annual low flow; and
 - (c) An interim sustainable extraction regime shall apply to all groundwaters which, having regard to the baseline in Policy 1(a), provides that permits to take water shall not be issued if their effect is likely to either:
 - (ii) Reduce the mean annual flow from natural groundwater springs flowing from the groundwater, or
 - (iii) Reduce the mean level of the groundwater as measured over a five year period.

Monitoring and Review of this National Policy Statement

Policy 6

The Minister for the Environment will:

- (a) Monitor and report every three years on the effectiveness of the performance of public authorities in implementing this Statement;
- (b) Seek an independent review of the implementation and effectiveness of this Statement in achieving all the objectives and policies of the Statement no later than 10 years after it comes into force and shall then consider the need to review, change or revoke this statement.

Managing Uncertainty

Policy 7

All persons exercising functions and powers in relation to this Statement shall have a duty to acknowledge significant areas of scientific uncertainty and, wherever this arises, shall provide a statement as to how this uncertainty is to be managed, with due regard to the need for precaution to safeguard the Objectives specified in this Statement.

Definitions

In this National Policy Statement:

“**Act**” means the Resource Management Act 1991.

“**Degraded Fresh Waters**” means those Fresh Waters of a region whose Notable Values have been so degraded that they cannot:

- a) protect the life supporting capacity of those waters including their ecological values;
- b) provide for safe swimming and other recreation in and on the water; or
- c) provide for the protection, propagation and safe harvesting of fish, shellfish, wildlife and mahinga kai.

“**Environmental Flows and Water Levels**” means a regional rule to prevent the allocation for consumptive use of Fresh Waters necessary for the purposes of protecting, maintaining, enhancing or restoring Notable Values of the relevant Fresh Water body.

“**Fresh Water Quality Standard**” means a regional rule on Fresh Water quality which gives effect to this Statement.

“**Fresh Water**” means the Fresh Water of New Zealand’s rivers, lakes, wetlands and groundwater systems [but does not include Fresh Water of any ephemeral stream or artificial watercourse].

“**Notable Values**” in relation to any Fresh Water includes:

- (a) Scientific, ecological and biodiversity values;
- (b) Cultural values; and
- (c) Recreational (including contact recreational; eg, swimming) values.

“**Protracted Polluted Status**” is where a particular Fresh Water body cannot be managed to achieve the Objectives in this Statement because:

- (i) The particular Fresh Water body, and/or resources associated with it, have become contaminated by human agency in the past and there are long time lags in the operation of natural hydrological or ecosystem processes, which make it impractical to achieve the Objectives in the time available; or
- (ii) The costs of modifying adjoining land use practices to reduce the pollution of the particular Fresh Water body are such that they would render any land incapable of reasonable use, and would place an unfair and unreasonable burden on any person having an interest in the land; or
- (iii) In the case of a Fresh Water body in an urban catchment affected by stormwater discharges, including stormwater contaminated by sewage, the costs of removing or remediating the contamination sources in the time available are prohibitive.

“**Statement**” means the National Policy Statement for Freshwater Management.