



Auckland Regional Council

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COUNCILLORS OFFICE

SUBMISSION TO THE PROPOSED NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT

TO: Ministry for the Environment
Manatu Mo Te Taiao
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FROM: Auckland Regional Council
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The Auckland Regional Council (ARC) makes this submission in conditional support to the Proposed National Policy Statement for Freshwater Management

The reasons for this submission and the relief sought are as follows:

1. Introduction

- 1.1 The Resource Management Act 1991 ("the Act") states that the purpose of a National Policy Statement is to "state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act".¹ Therefore, a National Policy Statement will identify the matter of national significance, its relevance to Part 2 matters and how it will achieve the purpose of the Act. A National Policy Statement should not be a de facto amendment of the Act's purpose nor should it undermine the directions in sections 6, 7 and 8 as to the Act's purpose.

¹ Section 45(1)

- 1.2 The Proposed National Policy Statement for Freshwater Management (NPS) sets a direction for freshwater management which centres on identifying the values of water bodies, and then developing standards to ensure that these values are protected or enhanced. It forms part of the Ministry's overall Sustainable Water Programme of Action which was initiated in 2003. The NPS is intended to improve the management of New Zealand's freshwater resources so that, by 2035, they meet people's needs and aspirations. The focus of the NPS is firmly on the receiving environment, requiring regional councils to identify what freshwater bodies are valued for and to set out how they will be protected or enhanced.
- 1.3 The proposed NPS envisages that regional (and district) plans will continue to implement the directions set in the regional policy statement. Regional plans are required to notify rules prescribing freshwater quality standards, and environmental flows and levels for all freshwater resources (including groundwater) within a timeframe to be set in the regional policy statement. Prescribing standards through rules is at variance with the approach adopted by most regional councils to date, which have stopped short of using rules and have instead relied more on policies and methods. This will potentially prove challenging to local authorities to implement.
- 1.4 The Auckland Regional Council (ARC) supports the provision of greater policy direction in relation to the management of freshwater resources. Therefore, while the ARC is generally supportive of the proposed NPS, it seeks greater guidance and clarity from the proposed NPS before it would be totally supportive of it.
- 1.5 The ARC's main concerns with the Proposed NPS are that:
- It does not give clear national direction or guidance (due to the lack of prioritisation) as to the policy issues it seeks to address;
 - It does not give clear guidance regarding the decision-making process that local authorities will have to engage in to resolve freshwater resource and land use related issues;
 - It should specify a series of measurable and time-bound objectives so that progress towards the date of 2035 can be evaluated;
 - It uses a number of unfamiliar and poorly defined terms;
 - It may result in a high implementation costs being imposed on local authorities due to the proposed planning timeframes, degree of consultation that would be required and the amount of additional environmental monitoring that will be necessary.

2. Decision-Making

Issues

- 2.1 The management of freshwater resources involves complex inter-relationships between natural systems, land-use, community interests and values. Due to this inherent complexity, and the increasing likelihood of conflict being generated by the increasing pressures on freshwater resources in parts of New Zealand, clear

national guidance and direction is a positive step towards helping facilitate and improve the decision-making process of local authorities

- 2.2 Objective 2 only addresses the "...integrated management of effects on freshwater", and as such, is too narrow. It needs to be acknowledged that integrated management needs to take into account the complex inter-relationships that exist (as noted above) as well as the inter-connected nature of freshwater resources themselves, such as the connections between surface water and groundwater and the coast
- 2.3 With regards to the issue of cumulative effects, the ARC acknowledges and supports the principle of setting water quality standards and minimum flows that will assist regional councils to establish bottom-lines. However, the proposed NPS does not provide a mandate to local authorities to refuse, if they so choose, resource consent applications where potential cumulative effects of an activity may compromise any implemented water quality standards or minimum flows.
- 2.4 Poor quality information and the lack of information are common issues that local authority decision-makers often face with when considering consent applications for discharges or water takes or when setting water quality standards etc. Therefore, increased direction is required to guide how decisions should be made in the face of uncertainty beyond that already provided by the RMA. The proposed NPS does not appear to offer any additional direction in relation to making decisions when presented with varying degrees of uncertainty
- 2.5 Objective 4 relates to the recognition and protection of life supporting capacity and ecological values and as referred to in Part 2 of the RMA. This objective does not acknowledge out-of-stream values such as riparian margins nor does it specifically mention biodiversity or the associated threat from bio-security issues. If these elements are not recognised within this objective, then they will not be reflected in any subsequent policies or influence the decision-making process. New Zealand's freshwater ecosystems, including wetlands, streams and lakes, contain significant biodiversity values and provide habitats for threatened species. The management of New Zealand's freshwater ecosystems needs to address these issues. For example:

- Wetlands have been reduced significantly (over 90%) from their former extent in NZ;
- Protection and restoration of riparian vegetation is important for maintaining biodiversity as well as water quality;
- Pest plants and animals, e.g. weeds and pest fish, have significant adverse impacts on freshwater ecosystems and habitats.

Freshwater wetlands and habitats for nationally threatened species have been identified by DoC and MFE as national priorities for protecting rare and threatened native biodiversity on private land (<http://www.mfe.govt.nz/issues/biodiversity/initiatives/private-land/work-programme.html>).

Relief Sought

- 2.6 Greater national guidance and direction is sought within this NPS to aid in the decision-making processes of local authorities. This should include high level policy direction to adopt an integrated management approach to all levels of decision making and to guide how local authorities could make decisions when faced with uncertainty.
- 2.7 Objective 2 should be reworded to recognise the inter-relationships between freshwater management issues and land-use, as well as acknowledging the inter-connected nature within water resources themselves (including surface water, groundwater and coastal). This rewording would give greater direction to the requirement of an integrated management approach.
- 2.8 A policy is required to ensure that an integrated approach to decision-making is taken at all levels to ensure the implementation of the objectives. This policy should direct persons to adopt an integrated approach to the management of freshwater resources and should include having regard to the inter-relationships between freshwater resources and land-use, the inter-connections between surface water, groundwater and coastal water, the social, economic and cultural values with respect to freshwater resources, and the biophysical limits of freshwater resources etc.
- 2.9 Reference should be made to the contribution of out-of-stream values (such as riparian margins) and the value of protecting biodiversity as part of life supporting capacity and ecological values as referred to in Objective 4. A reference to the issue posed by bio-security threats is also required and this should be linked to Objective 4.

3. Water Allocation

Issues

- 3.1 With the increasing demand for freshwater resources comes increases in competition and conflict between the various segments of the community.
- 3.2 The proposed NPS does not set national priorities for water allocation or require that regional councils should set priorities for competing demands in their region. It also does not set as an overall objective, the need to ensure current and projected future availability of freshwater for municipal supply
- 3.3 The issue of over-allocation was a significant driver for the preparation of this NPS. However this NPS does not set an objective to avoid this issue nor does it provide policy direction as to how to address over-allocation once it already exists.
- 3.4 The ARC does not support the privatisation of water, but it does support the mechanism of transferring consents in cases of surplus allocation and the need to avoid the use of freshwater resources as a speculative commodity. The action of setting environmental flows and levels in effect sets a "cap" on a freshwater

resource and would thus allow the operation of a cap and transfer scheme to occur.

Relief Sought

- 3.5 In relation to the issue of over-allocation, the freshwater NPS should provide an overall objective to avoid the over-allocation of freshwater resources and provide encouragement to regional councils to initiate cap and transfer schemes if they so chose. This would provide a clear mandate to regional councils to then actively manage over-allocated and potentially over-allocated catchments.
- 3.6 Policies are required to guide regional councils in the prioritisation of water demand. A specific policy should direct regional councils to firstly, prioritise water allocation for reasonable domestic and animal drinking water needs; secondly for reasonably foreseeable municipal water supply requirements (subject to appropriate water conservation and demand management initiatives); thirdly for "non-consumptive" needs (i. e. water that is used and then returned to effectively the same place at effectively the same time), and fourthly, everything else over and above sufficient water to meet in-stream requirements.
- 3.7 Policy guidance is required to direct regional councils in how to address over-allocated catchments. For example, by possibility implementing a cap and transfer scheme, etc

4 Water Quality

Issues

- 4.1 New Zealand still possess many freshwater resources that are of an excellent quality, however, increasing land-use pressures are causing a deterioration of water quality in various parts of the country. While the contribution from point discharges are more easily controlled, sources of contamination from non-point discharges are vastly more difficult to manage.
- 4.2 It should be acknowledged by this NPS that the contribution of contamination from non-point sources is a significant issue. The proposed NPS does not give strong direction to local authorities with regards to the control of land use within an integrated framework that incorporates the imposition of water quality standards
- 4.3 The management of "at risk" catchments, i.e. catchments that may currently have acceptable water quality but will become degraded if actions do not occur within a short timeframe, can also be particularly challenging for local authorities. Even though Policy 1 (c) directs regional plan towards the enhancement or restoration of notable values of any degraded freshwater resources, and therefore implies a priority, the proposed NPS does not give any guidance as to how to identify and then respond quickly to manage catchments that are "at risk".
- 4.4 The ARC therefore supports a stronger mandate within the NPS to prevent further degradation of freshwater resources as a result of land use and discharges of contaminants within "at risk" catchments

- 4.5 The use of the term “swimmability” is vague. The ARC supports the use of standards for swimming and recreation, but it should be recognised that in Auckland’s case, these resources are relatively small, and are under great pressure from land-use.
- 4.6 It is noted within the Preamble that by 2035 the quality of these resources meets the aspirations of all New Zealanders. It is unclear exactly what the “aspirations of all New Zealanders” would be and since this will remain unknown, it is unsuitable for use as a form of objective.

Relief Sought

- 4.7 A statement within the NPS is required to illustrate that the contribution from non-point discharges is a significant national issue, and as such, the greater control of land-use by local authorities is encouraged to manage this particular issue.
- 4.8 Policy direction is required to state that further degradation of freshwater resources as a result of land use and the discharge of contaminants is avoided wherever possible. Therefore the control of land use should be integrated with the imposition of water quality standards.
- 4.9 Remove the term “swimmability” and replace with contact recreation standards where appropriate.
- 4.10 Policy direction is required to give guidance to regional councils in the identification of “at risk” catchments as well in the prioritisation in the addressing the potential impacts on these catchments.
- 4.11 State a series of time-bound objectives with some degree of discretion given to regional councils to help guide them towards making an acceptable rate of progress towards achieving any set objectives between when the NPS becomes operative and 2035.
- 4.12 Remove the reference to the “aspirations of all New Zealanders” from the Preamble.

5 Notable Values

Issues

- 5.1 The Proposed NPS for Freshwater Management sets out a process whereby regional councils are to identify the “notable values” of any “outstanding” and “degraded” freshwater resources (Policy 1 (b)) and then set freshwater quality standards and environmental flows and levels for all freshwater resources (Policy 1 (c)). The proposed NPS directs regional councils to set freshwater quality standards and environmental flows and levels as rules in regional plans.
- 5.2 However the proposed NPS does not give clear guidance as to how local authorities would manage any identified “outstanding” or “degraded” freshwater resources beyond that given by the definitions of these two terms. Since potentially, the vast majority of freshwater resources within any particular region

could be classed as either “outstanding” or “degraded”, guidance should also be given from a NPS as to how local authorities could prioritise their actions at a rate that meets the needs of the community.

- 5.3 The determination and identification of “notable values” is essential to the approach taken by the proposed NPS, and in effect, underpins what will be defined as an “outstanding” or “degraded” freshwater resource. However the definition of “notable values” is rather narrow and does not give clear national direction as to what particular values should be given additional weighting to support regional decision-making. Without this guidance, the process of assigning “notable values” will be difficult and open to vigorous challenge. There should also be an acknowledgement that water bodies can have a range of values greater than just environmental values.
- 5.4 A number of management implications and actions would occur when a freshwater body has been identified as either “degraded” or “outstanding”. If a freshwater body is identified as degraded, then Policy 1 (c) directs regional council towards the enhancement or restoration of any associated notable values, or if a freshwater body is identified as outstanding, then direction is towards the protection of any associated notable values. The costs to local authorities of these actions would most likely be high as a result.

Relief Sought

- 5.5 Establish a series of criteria that can then be applied at a regional level and set out a process to help regional councils identify the notable values. This will help in the final determination of values during consultation with the regional community and would result in any applied water quality standards and timeframes being reflective of national and regional community values.
- 5.6 Central Government should allocate resources to regional and territorial authorities to aid in the provision of enhancement or protection actions.

6. Tangata Whenua

Issues

- 6.1 The proposed NPS seeks to ensure the involvement of both iwi and hapu in the management of and decision-making regarding all freshwater resources of the region as per Policy 1 (d). Policy 1 (e) notes that regional policy statements are to identify Tangata Whenua values and interests in respect of all freshwater resources of the region.
- 6.2 There are a number of issues with this approach. There can be numerous iwi and hapu within any particular region, therefore the obligations on local authorities could be onerous in terms of resources. The proposed NPS does not address any iwi or hapu capability or capacity issues that may exist and would, as a result, prevent full engagement in this decision-making process. The process outlined in the proposed NPS overrides existing governance arrangements and may reduce future flexibility to develop other processes for Maori to engage with local and regional councils. The terms “iwi” and “hapu” are

inconsistent with the RMA, which refers to "tangata whenua". The term "interests" is unclear.

Relief Sought

- 6.3 Make the NPS consistent with the provisions in the RMA that relate to tangata whenua and define what is meant by the term "interests".
- 6.4 Policy guidance is required to direct local authorities to work with tangata whenua to identify characteristics of freshwater resources that are of special value to tangata whenua. In doing so, local authorities shall recognise that tangata whenua have the right to choose not to identify these characteristics. This guidance should have regard to the capacity and capability of both local authorities and tangata whenua and not override existing governance arrangements.

7. Implementation Issues

Issues

- 7.1 The proposed NPS directs that regional and district plans are to be notified within 40 working days of an RPS that gives effect to the NPS being made operative. The ARC believes that this proposed timeframe is both unreasonable and unrealistic. Since this proposed timeframe would mean bringing forward many regional and district plan reviews in order to be consistent with, or give effect to, the reviewed regional policy statements, many local authority resources will be consumed as a consequence. This would have the effect of taking resources away from programmes aimed at water quality improvement and monitoring to spending on plan reviews and plan changes or variations.
- 7.2 The proposed NPS also directs that by the second anniversary of the date of commencement of the NPS (Policy 1) every regional council must notify a proposed RPS or a variation to a RPS in order to give effect to the NPS. Since the Auckland Regional Council is currently reviewing its RPS, which is due for notification in late 2009, the ARC could be faced with carrying out a variation almost immediately to its RPS in order to give effect to the NPS. This seems excessively onerous and wasteful of public funding.
- 7.3 It should be acknowledged that that this proposed NPS would result in additional state of the environment monitoring in order to help guide the setting of water quality standards and environmental flows and levels. The degree of additional monitoring could be substantial, depending upon the extensiveness of existing monitoring programmes.
- 7.4 The proposed NPS directs (as per the definitions) regional councils to implement water quality standards and environmental flows and water levels as rules within regional plans. This approach is relatively uncommon in regional plans and as a consequence, will potentially offer a number of technical and legal challenges in relation to the writing of these rules themselves and the monitoring and consenting of any associated activities. A particular challenge that would occur from this approach is that some land-use activities authorised by territorial


authorities could generate non-compliances with set water quality standards within a catchment.

- 7.5 The proposed NPS introduces a number of new terms. There are a number of issues with these terms, such as: "environmental flows and water levels" – this definition differs from the NES for Ecological Flows and water Levels; "Industry good practice" – what does this mean and how would it be assessed? – "Tangata Whenua values and interests" – are not defined. Since many of the terms used in the proposed NPS are not referred to in the RMA, there is an increased risk of litigation to define these terms.

Relief Sought

- 7.6 The timeframe for regional and district plans to be notified within 40 working days of an RPS that gives effect to the NPS being made operative should be removed. This in turn should be replaced with directing regional and district councils to give effect to the NPS for Freshwater Management no later than the next statutorily required plan review. It may be appropriate to implement provisions relating to over-allocation and/or poor water quality in critical areas in a shorter timeframe, as determined by individual regional councils.
- 7.7 Regional councils should be given the option of implementing any water quality standards and environmental flows and water levels either as policies, methods or as rules. If water quality standards and environmental flows and water levels are written as policies or methods, then these shall be recognised and provided for when assessing resource consent applications.
- 7.8 Any terms that are to be used in the NPS that are not referred to in the RMA should be clearly defined in order to improve clarity and reduce the likelihood of litigation.

Signed for and on behalf of the
Auckland Regional Council



Cr Paul Walbran
Chair, Regional Strategy and Planning Committee

Dated on the 23rd day of January 2009.

ARC Submission to the proposed NPS for Freshwater Management

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