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Submission on Proposal for National Policy Statement for Freshwater Management

Introduction

1. This is a submission by the Taranaki Regional Council [the Council] on the *Proposed National Policy Statement on Freshwater Management* [the Proposed NPS], notified on 20 September 2008.
2. The Council makes this submission in recognition of its:
 - Statutory roles and responsibilities under the Resource Management Act 1991 [the Act], particularly in relation to the management of fresh water; and
 - Its regional advocacy responsibilities, whereby it represents 104,000 people within the Taranaki region on matters of regional interest and concern.
3. The Council has considerable experience in freshwater management and has used the existing tools within the Act to achieve its policy objectives and bring about significant environmental changes. This is based on a mix of regulatory and non-regulatory approaches and is underpinned by good science, early policy intervention, generally positive stakeholder relationships, and 'follow through', in the form of comprehensive compliance and state of the environment monitoring programmes and appropriate use of the enforcement provisions of the Act.
4. Keys to the success of all the Council's programmes have been acting early, taking incremental steps forward, adopting pragmatic approaches, balancing social, cultural, economic and environmental values, taking the community along with us and focusing on achieving actual work on the ground, rather than being bound up in appeals and disputes over the front end policy process.
5. The Council questions the need for the NPS. There has been imprecise and at times inaccurate definition of the problems, issues and challenges facing the management of freshwater in New Zealand. Without a clear understanding of these issues it is not feasible to design a regulatory tool such as an NPS to address those issues. Furthermore, the economic analysis of the likely implications of a national regulatory policy instrument has been woefully inadequate. Nor has there been a careful and considered analysis of what the NPS aims to achieve, whether it will achieve this, and in doing so, what the potential impact on communities and economies will be. There are serious risks

in getting it wrong. While it is clear that New Zealand does face challenges with freshwater management, they tend to be catchment or sub-regional specific. Attempting to address those challenges through a blunt instrument such as an NPS will not be successful. However, a national policy statement could, in recognising nationally important issues, target those catchments and sub-regions requiring action.

Submission process

6. The Council considered the Proposed NPS at its Policy and Planning Committee meeting on 20 November 2008. Comments received at this meeting form the basis of the following submission.
7. The submission on the NPS made by *Local Government New Zealand* was studied, and without undue replication, key points raised in that submission of particular concern to the Council have been highlighted here. The Council supports the intent of their submission to make the NPS less prescriptive.
8. Having accepted that the NPS is being prepared, and the time for debating the need for it is past, the Council does support the intent of much of it, but has concerns over some of the wording and cost and resource implications. The submission deals firstly with some general issues of interest, and then comments on specific sections of the NPS.

General submission points

National issues to be recognised in an NPS

9. The Council considers that the primary role of an NPS on freshwater management is to clearly articulate national values and desired outcomes. It provides an opportunity to focus on issues of genuine national significance and issues that may have been placed in the 'too-hard-basket'. Importantly it also should add value to local decision making.
10. The NPS addresses freshwater management issues in a general way with broad overarching objectives. This is appropriate as it will enable councils to themselves develop more specific objectives and targets for water management within their regions, and recognises regional differences. Should this general approach not lead to the desired outcomes, then the review of the NPS could establish more specific national goals to be set.
11. The preamble to the NPS could more clearly articulate the priority freshwater management issues for the nation. In the Council's view these would include managing diffuse source pollution in a cost-effective way; dealing with the cumulative effects of water contamination and water use; prioritising water allocation; wetland protection and enhancement; integrated management of land use and water quality and quantity; identifying nationally important values; and balancing social, economic, cultural and environmental values.
12. The issue of managing diffuse source discharges, would seem to be the next most urgent freshwater management issue facing New Zealand, yet the preamble is silent on this issue, despite the issue being canvassed in the Section 32 report and the 2007 State of the Environment Report¹.
13. The Council considers that it is very important to acknowledge that in order to address the social, economic and cultural well-being of the community, it is necessary to manage waterways within the context of the existing environment. For example, management

¹ MfE 2007. Environment New Zealand.

objectives for water ways within a highly productive agricultural environment will differ from those in a national park.

14. *Relief sought:*

- Acknowledge in the preamble the key freshwater management needs for the future as listed above, particularly the management of diffuse source discharges; and
- Recognise in the preamble the deliberate general approach of the NPS will facilitate local decision making and indicate that future reviews may require more specific national objective setting if this approach does not lead to the necessary improvements.

Prescriptive and process orientated policies

15. The policies in the NPS are very prescriptive and process orientated. They appear to have been written from a perspective that local government requires instruction on how to address freshwater issues through the preparation of RPSs and plans. This presupposes that the planning requirements set out in the Act have not been undertaken, which is not the case. Most regions have regional policy statements and plans, including rules, in place addressing freshwater management.
16. In setting out such a prescriptive approach, the NPS also presupposes that actions by local government have completely failed to address water quality and water quantity issues. This is not the case either. Since the inception of the Act 18 years ago significant improvements have been made in many catchments to address water quality and quantity issues through plan reviews and changes and through the consent renewal process. Indeed second generation plans are now being prepared and in some cases plans are being combined into one.
17. In particular, the results of improvements made to point source discharges have been recognised through the MfE 2007 State of the Environment Report. The Council's own soon-to-be-released state of the environment report highlights measurable improvements that have been made to the ecological health of a number of waterways in Taranaki.
18. Furthermore, a recent national survey of public perceptions about both the management and condition of freshwater found that 73.3% respondents considered the state of rivers and lakes to be very good, good or adequate, and 69.3% of respondents considered rivers and lakes to be managed adequately, well or very well². Thus public perception of freshwater management and state is relatively high.
19. The process orientated policies in the NPS will force councils to apply resources to lengthy, costly and involved planning processes for issues that may already be adequately addressed through their existing planning documents. The risk is that this may undermine the work currently being undertaken by councils. For example, the Council has already just completed a review of its RPS in which river and stream catchments of high quality or high value for their natural, ecological and amenity values were listed.
20. Furthermore, this approach carries with it the very real risk of diverting resources away from delivering practical solutions on the ground. The Council's approach in the past has always been to prepare its policy documents in consultation with the community efficiently, and then focus on working with the community to deliver environmental improvements that are meaningful, practical and measurable.

² Hughey, K.F.D.; Kerr, G and Cullen, R. 2008. *Public Perceptions of New Zealand's Environment*: 2008. EOS Ecology, Christchurch.

21. Therefore the preferred approach would be for the NPS policies to only require councils to undertake policy and plan changes **where necessary** (as implied on the Ministry's website³).

22. *Relief sought:*

- Acknowledge in the preamble of the NPS the improvements in water management, particularly of point source discharges, that have come about through the planning provisions under the Act over the past 18 years; and
- Clarify policies 1-3 so that it is clear that councils will only need to undertake policy or plan reviews where necessary to give effect to the NPS.

Methods prescribed in the NPS

23. The policies outlined in the NPS provide councils with detailed planning instruction. Many of these instructions, such as matters to address in consent reviews, matters to include in RPSs, content of plan reviews etc could be better addressed through other tools such as National Environmental Standards, Regulations, or the production of best practice notes or guidelines. Councils have special interest groups in place that have been involved in this type of work already.

24. For example, the NPS seeks that discharge consents have conditions that ensure the protection of freshwater quality (policy 2 (a)c)(iii)(A)). This is to be achieved through a RPS review, then a regional plan review, which will then require consents to be reviewed, although only those that have been granted after the NPS became operative. This seems a long winded and costly process to achieve the outcome.

25. Another example is the method proposed to address issues where there is increased land intensification. Policy 3 assumes that land use changes automatically trigger a consenting regime, whereby conditions could be placed on consents to ensure water quality protection. However, this is not always the case – conversion of less intensive farming to dairying for example is often a permitted activity, triggering no such consenting requirements. Policy 3 may not then lead to the improvements in the management of diffuse source discharges as may have been anticipated.

26. Furthermore, the NPS could also take the opportunity for central government to encourage other organisations such as Federated Farmers, Manufacturers Association, major water users etc to actively promote, support and adopt practices among their members that would give effect to the NPS. While the NPS does try to give recognition to industry best practice, the overall impression is that sustainable water management is a problem for local government to deal with, rather than being the responsibility of the whole community with improvements requiring a collective response.

27. *Relief sought:*

- Evaluate each of the methods proposed in the policies to ensure that the most effective methods are used and that they will deliver the expected results; and
- Recognise (even if just in the preamble) that achieving the goals of the NPS will require cross-sector cooperation, employing a range of regulatory and non-regulatory approaches, from the whole community.

Timeframes and implementation costs

³ <http://www.mfe.govt.nz/issues/water/prog-action/faqs.html#top>

28. The implementation of the NPS policies will require a considerable amount of work to be done including deciphering new terms, undertaking extensive consultation, identifying values, determining standards and environmental flows, working with iwi and hapū to define and identify tangata whenua values and interests. This all would need to happen to enable an RPS to be prepared and notified within 2 years (Policy 1) and regional plans, changes or variations notified within 40 days of an RPS becoming operative (Policy 2).
29. The resourcing and costs for such work could be prohibitive, and based on the Council's own experience with RPS and plan preparation, the timeframes are unrealistic, impractical and unworkable.
30. If necessary for reasons of clarity and certainty, the NPS could require plan changes as soon as practicable or at the next statutory review.
31. In this Council's view implementing the objectives of the NPS will require a package of support measures. These could include for example appropriate financial support for councils, advice and guidance material, support for research and assistance for infrastructural upgrades to address local water quality / quantity issues.
32. *Relief sought:*
- Amend the timeframes to fit into existing or proposed planning frameworks. The timetable for revising plans could be set out by individual councils in their RPSs or could happen at the next statutory review;
 - Ensure a comprehensive implementation package is developed by central government, and released at the same time as the NPS; and
 - Provide resources to assist councils implement the NPS.

Clarity and understanding

33. The proposed NPS is not easy to understand. Two examples illustrate this: Objective 2 takes 45 words, and a very complex sentence to say that changes in land-use should consider impacts on freshwater quality and quantity. Policy 2(c)(i) is a complex way of saying that holders of water permits are to be required to use water efficiently.
34. Furthermore, phrases with a commonly understood meaning are redefined in the NPS to mean something quite different (eg. 'freshwater quality standard' which normally refers to a numerical and measurable standard of water quality is re-defined to mean a regional rule; 'environmental flows and water levels' has been defined elsewhere as 'the flows and water levels required in a water body to provide for a given set of values which are established through a regional plan or other statutory process'⁴ but in this NPS could mean a regional rule). Other phrases, such as 'guide and direct' appear contradictory.
35. The risk of having an unclear and confusing document is uncertainty, unrealistic expectations from different sector groups, challenge and expensive litigation.
36. The Council submits that the language and clarity of the NPS could be improved markedly by removing long and complex sentences, complicated language and the distracting use of capital letters for defined words. Careful rewriting of phrases to say what they mean would also help.

37. Relief sought:

⁴ Proposed National Environmental Standard on Ecological Flows and Water Levels: Discussion Document.

- That the NPS be subjected to a thorough edit for 'readability' in order to make it more user-friendly and less vulnerable to litigation;
- Phrases such as 'guide and direct' are replaced with one word – direct (given that plans are required to give effect to RPSs);
- Remove capitalisation from defined words for easier readability; and
- Retain the common meaning of words and phrases.

Role of regional councils and territorial authorities

38. The Council is concerned that the NPS creates uncertainty around the respective roles for regional councils and territorial authorities. Complex resource management issues are best dealt with when there is a clear mandate for an agency to take action and where there is no ambiguity over whose job it is.

39. *Relief sought:*

Ensure that the roles of regional councils and territorial authorities with respect to freshwater management are articulated clearly.

Submission on specific points of the NPS

Objective 1 – Enabling well-being of people and communities

40. The Council supports this objective. It is appropriate that the NPS recognises that freshwater management involves ensuring that the people and communities of New Zealand can provide for their social, economic and cultural well-being. As well as being consistent with the Local Government Act, this recognises that social and economic factors also influence the management of fresh water and must be balanced against the environmental factors.

41. *Relief sought:*

Retain Objective 1.

Objective 2 – Ensuring integrated management of effects on freshwater

42. Integrated management is an important aspect of freshwater management. It is important in a number of different ways, e.g. integration of the effects of surface water use on groundwater, integration of the effects of land use on water quality, integration of the effects of freshwater management on economic, social and cultural wellbeing and also integration of management of freshwater across and within management agencies and with the community. The Council supports the need for objectives and policies to ensure integrated management of freshwater resources. However, Objective 2 falls short of delivering on this, as it is only focused on the effects of future land use changes, and is further complicated by the words in brackets.

43. *Relief sought:*

Retain the intent of Objective 2 to ensure integrated management of freshwater, but expand it to include other important aspects of integration and simplify the construction of the objective through a list of points.

Objective 3 – Improving the quality of freshwater.

44. The Council supports the intent of an objective that aims to see the progressive enhancement of the overall quality of freshwater (although at a rate and in a manner that provides for the social, economic and cultural well-being of New Zealand communities

and through local decision making). Aiming to see only the 'appropriate' freshwater resources managed at a swimmable standard is also supported, as this targets the objective to those waterways that the community wishes to swim in, rather than as a sweeping target applied to waterways which are too small, cold, rapid, or dangerous for swimming.

45. The Council notes that the NPS does not attempt to establish a single definition for 'swimmable standard'. The Council supports this approach as it will allow regional councils to set their own standards in consultation with their communities.

46. *Relief sought:*

Retain Objective 3.

Objective 4 - Recognising and protecting life supporting capacity and ecological values

47. The Council supports the intent of this objective noting its very general wording (taken directly from the Act), and stating what most, if not all, councils should be doing anyway. By adopting this general approach it will enable councils the flexibility to interpret 'life supporting capacity', 'ecological values' and 'inappropriate' uses in consultation with their communities in a manner suitable to local conditions. It will further enable councils to adopt their own, more measurable narrative or numerical standards in a manner that will enable them to recognise the social, cultural, and economic values of water which can result in lower water quality standards than may be found in pristine environments.

48. *Relief sought:*

Retain the general wording for this objective.

Objective 5 - Addressing freshwater degradation

49. Objective 5 provides the opportunity to signal the national importance of dealing with land use effects on freshwater resources, i.e. diffuse source discharges. This is a significant issue for New Zealand, and councils would benefit from it being recognised as a matter of national priority in this national policy statement.

50. The objective as currently written however only applies to future land use changes with the use of the term 'Land-use Development' applying only to 'land-use intensification, land-use change and subdivision of land'.

51. The objective uses the words 'to control' implying regulation whereas there are also other methods such as non-regulatory methods. Furthermore, the objective uses the phrase 'the effects of land use' whereas the Act provides for regional councils to 'control the use of land' and district councils to 'control the effects of land use'. These are subtle but important distinctions in the Act, and the NPS should reflect the Act, not confuse it.

52. *Relief sought:*

- Amend the objective to 'manage land use and development' and make it clear that this could include regulatory and/or non-regulatory approaches'; and
- Redefine 'land-use development' to include existing agricultural uses of land (this is applicable also for objectives 2 and 3).

Objective 6 – Managing demand for freshwater

53. The Council supports the intent of this objective, but again notes its very general wording and doubts that there are many councils who are not having regard to the matters listed. If there is a failure in managing demands for water, it might not be because the matters listed are not being considered but because of other reasons – perhaps because of a lack of information about the resource or a lack of capacity to act. This emphasises the need noted earlier in this submission for a comprehensive implementation package to assist councils in implementing the NPS.

54. *Relief sought:*

Retain the intent of this objective, but explore further what barriers there are to ensuring that demands for freshwater are sustainably managed.

Objective 7 – Efficient use of fresh water

55. The Council supports the intent of this objective. Avoiding wastage and using water more efficiently can have significant payback in reducing water demand, abstraction and pressures on infrastructure capacity etc. Again the objective has very general wording but at least establishes the efficient use of freshwater as a national priority.

56. *Relief sought:*

Retain the intent of this objective.

Objective 8 – Iwi and hapū roles and tangata whenua values and interests

57. While tangata whenua involvement in resource management is supported, requiring both iwi and hapū involvement would impose a burden on iwi, hapū and the Council in terms of capacity and capability. There are at least 75 recognised hapū in Taranaki. The NPS provides no national guidance for an appropriate process to define or identify tangata whenua values and interests. Furthermore, the term 'Tangata Whenua Values and Interests', despite being capitalised, is not defined.

58. *Relief sought:*

- Replace the term 'iwi, hapū and tangata whenua' with 'tangata whenua'; and
- Define 'Tangata Whenua Values and Interests' or alternatively, provide guidance on the appropriate process to define and identify such values and interests.

Objective 9 – Ensuring effective monitoring and reporting

59. Regional councils are already required to undertake effective monitoring and reporting under the Act. However, in order to be in a position to evaluate the overall success in freshwater management nationally, there needs to be greater coordination of regional council monitoring to be able to report on progress at a national scale. This will ensure that future national state of environment reporting, and the review of the effectiveness of the NPS (Policy 9), utilises regional council data rather than relying solely on NIWA programmes as in the 2007 State of the Environment Report.

60. *Relief sought:*

Add an additional point to Objective 9 requiring the Ministry for the Environment to undertake effective monitoring and reporting of the state of the environment at a national scale, using data gathered from regional councils and territorial authorities and to use this information to review the effectiveness of the NPS.

Conclusion

61. While the Council challenges the need for the NPS it supports the general nature of the objectives in the NPS recognising that this provides councils with the flexibility to manage freshwater resources in consultation with their communities and in a manner that enables their communities to provide for their social, economic and cultural well-being. Future reviews of the NPS could stipulate more specific objectives if this approach does not deliver on the planning or environmental outcomes.
62. The Council has provided some comments on how to make the NPS clearer, more focused and less open to litigation. These include clarifying that councils will only be required to undertake RPS and plan reviews where necessary to make them consistent with the NPS, evaluating the methods proposed in the NPS to ensure that they can't more effectively be achieved using other tools and removing or re-defining terms.
63. The Council stresses the opportunity this NPS has for highlighting the national importance of addressing diffuse source discharges to freshwater.
64. The Council has serious concerns about the prescriptive nature and process orientated focus of the policies and the likely increased costs for undertaking policy amendments, and potentially working our way through expensive litigation. Such resources would be far better spent addressing work on the ground to continue making real improvements in freshwater quality and quantity.
65. The Council does wish to be heard on support of this submission. If others make a similar submission, we could consider presenting a joint case with them at a hearing.

Yours faithfully
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