

**BOARD OF INQUIRY
PROPOSED NATIONAL POLICY STATEMENT
FOR FRESHWATER MANAGEMENT**

In the Matter of the Resource Management Act 1991

And

In the matter of a Proposed National Policy Statement for Freshwater
Management

BRIEF OF EVIDENCE IN CHIEF OF MARK BULPITT CHRISP

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Introduction

1. My name is Mark Bulpitt Chrisp. I am a Director and a Principal Environmental Planner in the Hamilton Office of Environmental Management Services Ltd.
2. I have been asked by Contact Energy Limited (Contact) to provide planning evidence in relation to the issues raised in its submission on the Proposed National Policy Statement for Freshwater Management (the Proposed NPS).
3. I have the following qualifications and experience relevant to the evidence I shall give:
 - (a) I have a Master of Social Sciences degree in Resources and Environmental Planning from the University of Waikato. I am a member of the New Zealand Planning Institute and have more than 19 years experience as a resource management consultant;
 - (b) Dealing with environmental issues associated with the development, expansion, and on-going operation of activities within the energy sector is one of my specialties. I have been a planning advisor for the following industrial / energy projects over the last 15 years:
 - Wairakei Binary Plant (1994 – 1998);
 - Te Rapa Dairy Factory Expansion and Co-generation Power Plant (1996 – 1997);
 - Ohaaki Geothermal Power Plant Re-consenting (1998 – 1999);
 - Tauhara Geothermal Power Development (1999 – 2000);
 - Tongariro Power Development Re-consenting – advising the Waikato Regional Council (Environment Waikato) (2000 – 2002);
 - Wairakei Geothermal Power Plant Re-consenting (1999 – 2007);
 - Exploratory Drilling on the Wairakei - Tauhara Geothermal System (2007 - 2009);
 - Te Mihi Geothermal Power Station (2007 – 2008);
 - Mokau Hydro-electric Power Scheme (2006 – Present);

- Hauāuru mā raki Project – Waikato Wind Farm (2006 – Present).
- Crest Energy – Kaipara Harbour Marine Turbine Project (2008 – Present); and
- Tauhara Geothermal Project (2008 – Present).

(c) I have assisted, or am currently assisting, Contact in relation to the following policy and planning matters:

- National Policy Statement on Renewable Electricity Generation (Current);
- An application by Fish and Game to amend the Water Conservation (Kawarau River) Order 1997 in respect of the Nevis River (Current);
- Variation 6 to the Waikato Regional Plan – Water Allocation (Current);
- Change 1 to the Waikato Regional Policy Statement and Variation 2 to the Waikato Regional Plan in relation to the management of geothermal resources (Completed);
- Review of the Waikato Regional Policy Statement (Current); and
- Proposed Plan Change 1C (Water Allocation and Use) to the Regional Plan: Water for Otago (Current).

4. I confirm that I have read the ‘Code of Conduct for Expert Witnesses’ contained in the Environment Court Consolidated Practice Note 2006. My evidence has been prepared in compliance with that Code in the same way as I would if giving evidence in the Environment Court. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

5. Given the importance of the Proposed NPS to the New Zealand economy and the ability of New Zealanders to enjoy a relatively high standard of living (due, in large part, to the supply of electricity), and the limited time available to each submitter to present evidence, my evidence will focus on

the key issues of concern in relation to the Proposed NPS raised in Contact's submission.

6. I will rely on the Board of Inquiry reading Contact's submission and further submission to obtain an understanding of the more detailed concerns in relation to specific objectives and policies of the Proposed NPS.

The Need for a National Perspective and Guidance

7. Section 45(1) of the RMA states:

"The purpose of national policy statements is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act."

8. By virtue of its title and the reference to "national significance"¹ in section 45(1) of the RMA, a national policy statement should, in my view, provide a national perspective whereby the objectives and policies provide direction and guidance as to outcomes that are considered to be national priorities. This immediately calls into question the approach embodied in the Proposed NPS which, in contrast to the above, devolves the formulation of freshwater management objectives, policies and methods (and therefore outcomes sought to be achieved) to regional councils.
9. The Proposed NPS should be a high level policy document providing guidance to decision makers as to the outcomes which are important from a national perspective, rather than being a prescriptive formula for each regional council to address freshwater management issues on a region by region basis.
10. The objectives stated in the Proposed NPS amount to little more than a redrafting of the elements of Part II of the RMA which are relevant to the management of freshwater resources. Accordingly, they provide little in the way of any helpful guidance. If anything, the attempt to express the imperatives in Part II of the RMA in different words will only result in confusion and endless arguments in the context of RMA processes that need to have regard to national policy statements.

¹ Matters of 'national significance' are wider than those identified as being of 'national importance' under section 6 of the RMA.

11. The policies in the Proposed NPS are primarily about directing regional and district councils to come up with the answers which should be the subject matter of the NPS itself (at a national, rather than regional or district level).
12. I have participated in many resource consent application (and/or notice of requirement) hearings where decision makers have been alerted to the anticipated national benefits of a particular proposal, yet no one has been able to point to any definitive statement as to what are the national priorities (in terms of any definitive policy statement under the RMA²) and what weight should be placed on any national benefits or priorities identified. This is particularly an issue in circumstances where decision makers are having to weigh up and consider the national benefits or positive effects of a proposal versus the local adverse effects on the environment.
13. Of relevance to the management of freshwater resources, an example would be national (and potentially international³) benefits of renewable electricity generation as a result of a river being dammed versus the adverse effects on the immediate environment such as a loss of habitat or recreational or landscape values associated with the existing environment.
14. These situations are confused by different government departments lodging submissions on the same applications and attending the hearings seeking completely opposite outcomes. In the case of energy projects, a common scenario is the Ministry of Economic Development lodging submissions seeking that consents be granted, while the Department of Conservation seeks that the same applications be declined albeit for different reasons.
15. A national policy statement provides the opportunity for Central Government (and, in this case, the Board of Inquiry in its role of advising the Minister for the Environment) to provide some leadership on how resources should be managed in an unequivocal manner in accordance with a set of national priorities.
16. This is not to say that 'one size should fit all', but rather some guidance should be provided as to which values or outcomes should be accorded a greater weight in terms of a national perspective. The NPS on Electricity Transmission 2008 provides a good template as to how a NPS can be drafted to achieve the type of guidance required.

² Apart from the New Zealand Coastal Policy Statement and the more recent National Policy Statement (NPS) on Electricity Transmission 2008.

³ In terms of the Government's obligations in relation to the Kyoto Protocol.

Effect of the Proposed NPS on Existing Resource Consents

17. Contact's biggest concern with the Proposed NPS is the effect it might have on existing consents, particularly those for renewable generation on the Clutha and Hawea Rivers. Contact has recently undergone an extensive process to renew its resource consents on these rivers, which govern Contact's ability to generate electricity from the Clyde and Roxburgh power stations and dams. Specific flow regimes and environmental mitigation measures have been incorporated in Contact's consents and have been determined with regard to a number of environmental factors, including habitat values, amenity values, recreational values, and safety impacts.
18. As the Proposed NPS will eventually result in new rules in plans on water flows and levels, it would have the ability to reopen the consent conditions that were made with specific reference to a particular fresh water body. If this occurred, it would be an inappropriate waste of resources and effort. In particular, Policies 1 and 2 will result in rules in plans that set Environmental Flows and Levels in 'Outstanding, Degraded and other' (that is, all) Freshwater Resources.
19. Fresh water is extremely important to New Zealand. From an electricity generation point of view, the availability of fresh water powers the country's hydro generation and provides cooling water for a large proportion of its thermal generation. In particular, New Zealand's hydro electricity generation provides a strong foundation to the nation's electricity system as well as an international competitive advantage. Despite the comment in the Section 32 Report (Section 1.1 paragraph 3), which states that water is "vital for generation of electricity", this nationally important industry is not provided for in the Proposed NPS, and indeed, by the apparent devaluing of economic contributions the Proposed NPS potentially hinders hydro-generation in favour of a range of other, predominantly protective, values.
20. As is also noted in the same section of the Section 32 Report noted above, the economic importance of fresh water is more far-reaching than just its contribution to the electricity system. Agriculture and forestry – and related industries – comprise a large proportion of New Zealand's economy and also are heavily reliant on the availability of fresh water.
21. The importance of fresh water is not limited to its economic worth. Water also has ecological, scenic, recreational, cultural, and spiritual significance

to New Zealanders. However, the Proposed NPS makes very little meaningful reference to economic values.

22. In this regard, Contact lodged a further submission (supporting in part the submission by Local Government NZ) seeking recognition of the values associated with freshwater resources, including the need to recognise economic values.

The Use of Freshwater Resources for Renewable Electricity Generation

23. It is my opinion that the Proposed NPS needs to clearly articulate the fact that the ability to use freshwater for the purposes of renewable electricity generation is vitally important to the social, economic, and cultural wellbeing of all New Zealanders and for their health and safety.
24. Other than a very general reference to the wellbeing of people and communities in Objective 1 of the Proposed NPS, it is largely silent on the social and economic wellbeing (and health and safety) of people and communities that is derived from the use of freshwater resources for the generation of electricity (not to mention the environmental benefits of such electricity generation being from a renewable source).
25. Contact has recently announced that it is investigating four options for the development of another dam on the Clutha River. Any of these proposals would be a significant undertaking and the advancement of any of them through the resource consent application process is highly likely to give rise to major objections from various sectors of the community.
26. One way of 'road testing' the Proposed NPS is to consider how it would assist decision makers or otherwise in identifying a 'national' perspective so as to inform their decision as to whether or not any such proposal should proceed. It is my assessment that the Proposed NPS, as currently drafted, provides little, if any, guidance beyond that which can already be found in the RMA (particularly Part II of the RMA). Even if the current 'prescription' in the Proposed NPS eventuates in regional policy and planning documents, we would still not have the benefit of a 'national' perspective.
27. In short, if the Government (and, in this case, the Board of Inquiry in its role of advising the Minister for the Environment) accepts the proposition that the use of freshwater for the purposes of renewable electricity generation is vitally important to the social, economic, and cultural wellbeing of all New Zealanders and for their health and safety, then the Proposed NPS should

state that as a position and include objectives and policies which recognise and provide for such outcomes to be achieved in appropriate circumstances.

28. This not only relates to new proposals, but also the ability to continue using existing infrastructure in an efficient and economic manner. In this regard, as part of any such approach and by way of example, Contact's specific relief in relation to Objective 6 is the addition of another bullet point as follows (or to like effect):

(d) the need to retain appropriate water for hydro electricity generation to enable New Zealand's future needs for electricity to be met.

29. I have been heavily involved in the planning issues associated with the Karapiro Domain and the adjacent Lake Karapiro since 1996, including recently securing resource consent for the 2010 World Cup Rowing Championships and a High Performance Centre for Rowing New Zealand and other developments on the Karapiro Domain. Lake Karapiro was formed as a result of the construction of the Karapiro Dam which was completed in 1947. Leaving aside the benefits associated with generation of electricity from renewable sources), it would be fair to say that Lake Karapiro is one of the most highly valued aquatic recreational resources in the country. It is booked out for aquatic recreational events most weekends throughout summer months and beyond. However, imagine for a moment if the Karapiro Dam did not exist and was the subject of a resource consent application under the RMA. There would inevitably be howls of protest and accusations of environmental vandalism due to adverse effects being perceived as significant. As a function of human nature, many sectors of our society are opposed to change and the greater the pace and scale of any change the greater their objection to it.
30. It would be helpful if the Proposed RPS articulated some high level recognition that a significant change to the nature of the environment (in this instance the way in which freshwater resources may be managed in particular circumstances) may not be regarded as a significant adverse effect on the environment in the longer term (the construction of a new dam being an obvious example in this regard).

Integration with Other Policy Documents

31. Another key concern is the Proposed NPS's lack of integration with other wider Central Government policy documents in relation to energy issues prepared under the RMA or other initiatives including, in particular, the Proposed NPS on Renewable Electricity Generation and the New Zealand Energy Strategy.
32. Because fresh water is so important in many different contexts in New Zealand, its use and management are affected by a number of different government policies and instruments, including:
 - Proposed National Policy Statement for Freshwater Management
 - New Zealand Energy Strategy
 - New Zealand Energy Efficiency and Conservation Strategy
 - Proposed National Environmental Standard on Ecological Flows and Water Levels
 - Proposed National Policy Statement for Renewable Electricity Generation
 - National Policy Statement on Electricity Transmission
 - Proposed National Environmental Standard on Electricity Transmission
 - Water quality initiatives, such as the Dairying and Clean Streams Accord and Riparian Management Guidelines
 - Water Conservation Orders.
33. These instruments all focus on different aspects of policy, but they all have the ability to influence the way in which New Zealanders use, value, and manage fresh water resources. Contact submits that it is crucial that the overall policy framework for fresh water management be carefully constructed and internally consistent, and give rise to no unintended consequences. Careful consideration of the issues, and of how they connect, intersect, and overlap, is essential to the development of a policy framework that allows the use of freshwater resources to develop in a way that maximises their benefit for all New Zealanders. Careful consideration must also be given to the role that freshwater has in meeting the Government's stated intention in the New Zealand Energy Strategy to achieve 90 per cent renewable electricity generation by 2025.
34. Guidance should be provided in the preamble as to how the Proposed NPS relates to these other policy documents, including (in particular) the NPS on

Renewable Electricity Generation (in what ever form that ends up). It cannot be assumed that these issues will be addressed in the NPS on Renewable Electricity Generation (currently in preparation) and, in particular, that any provisions of the latter NPS can be relied upon to influence the management of freshwater resources. This is on the basis that the final form of the NPS on Renewable Electricity Generation has yet to be determined. Furthermore, there is no guidance in the RMA for any of the existing or proposed national policy statements as to the relative weight that should be placed on any of them relative to one another and, in the event of any conflict, which should prevail. Therefore it is important that the Proposed NPS addresses all the issues relevant to it including the use of freshwater for renewable electricity generation in order to provide appropriate and full guidance.

Use of Terminology

35. An issue raised a number of times throughout Contact's submission is a concern about the use of undefined terms or terms which are similar, but different to those used and/or defined in the RMA.
36. If the Proposed NPS is to be of assistance to decision makers, it needs to use well defined terms so as to avoid arguments about what is intended. For example, when Objective 3 refers to a "swimmable standard", does this mean compliance with 'Class CR Water' (Contact Recreation) as defined in the Third Schedule to the RMA, or does it mean something different?

Further Submissions

37. Contact made further submissions on a wide range of issues raised by other submitters. I will briefly summarise and comment on the main points in this regard (in addition to the matters discussed above):
 - Any reference to, or intended use of, the 'precautionary approach' (as sought by a number of submitters) should be consistent with established case law.
 - The Proposed NPS should not include policies directing that water rates or levies be collected for the purposes of funding hapu groups or that commercial activities should pay a resource rent.
 - The request by Otago Regional Council that the Proposed NPS provide a mechanism for councils to review existing consent conditions is

opposed on the basis that such an ability already exists under section 128 of the RMA.

- Contact opposes the parts of the submission by NZ Freshwater Sciences Society seeking that the natural character of freshwater resources be “preserved” and that any further loss of habitat be prevented. Such absolute objectives or policies would deny the ability for any new uses of freshwater resources for the benefit of people and communities.
- Contact opposes the part of the submissions by the University of Canterbury and the NZ Conservation Authority seeking that geothermal water be included within the ambit of the NPS. This is unnecessary and inappropriate on the basis that there are already well developed policy and regulatory regimes applying to the management of geothermal resources in the regions within which they are located. In the case of the Waikato Region, the policy regime associated with geothermal resources has recently been settled following a lengthy planning and legal process. The end result was the subject of an international environmental award.
- Contact opposes the part of the submission by Wairakei Pastoral Ltd seeking that the NPS specify a list of standard conditions to be included in resource consents and designations. This is too greater a level of detail for the NPS which, instead, should be providing guidance as to the national priorities to be achieved.
- Contact supports the part of the submission by the NZ Law Society seeking that the process of changing subordinate documents not be initiated until prior policy statement and plan changes have been finalised and appeals resolved.
- Contact supports the parts of the submission by Meridian Energy Ltd seeking that the NPS provides a framework for water allocation that recognises existing investment in infrastructure, provides direction to local authorities as to the setting of water allocation preferences, recognises that existing and future hydro-electricity generation activities are valid and vital users of freshwater resources, articulates the need to protect existing consent holders rights to take, use, divert, dam water, or discharge into water.

- Contact supports the part of the submission by Mighty River Power Ltd seeking that the Proposed NPS be withdrawn and that it be redrafted in a form which more appropriately recognises and addresses freshwater management issues currently facing NZ, including national guidance on prioritising the use and allocation of the significant natural resource.
 - Contact supports the part of the submission by Horticulture NZ seeking that changes be made to the current Proposed NPS in response to the current round of submissions, and that a new NPS be notified for submissions and hearings.
38. In relation to the last two bullet points above, having reviewed the entire Summary of Submissions in relation to the Proposed NPS, it is clear that there is widespread concern about the nature and contents of the Proposed NPS as currently drafted from all sectors of the community. This is too important a matter, in my view, for it to be rushed through for the sake of getting the job completed sooner rather than later. Accordingly, it is my view that the Proposed NPS should be treated as a first draft and that a second version be released for submission and a further hearing (which one would anticipated would be on a narrower range of issues).

MB Crisp

3 June 2009