1. Waste Management NZ Ltd ("WMNZ") welcomes the opportunity to submit on the Ministry for the Environment's "Action for Healthy Waterways - Discussion Document" ("Discussion Document"), the amended National Policy Statement for Freshwater Management ("Draft NPS-FM"), and the proposed National Environmental Standard for Freshwater ("Draft NES-F") (together, the "Freshwater Policy Documents").

2. Regional waste management services operate as a network of collections, resource recovery, recycling, transfer and disposal facilities, with landfill disposal sites sitting at the top of the hierarchy. These networks are nationally and regionally significant infrastructure that are critical to the efficient functioning of cities and regions across New Zealand. All elements of the waste network including landfills are critical to enabling New Zealand's expected future growth.

3. WMNZ supports the objectives of the Freshwater Policy Documents to stop further degradation of our freshwater resources and to start improving the quality of those resources.

4. Despite nation-wide waste minimisation initiatives, an inevitable result of urban development is increased waste volumes and related increased demand for waste management services. WMNZ is committed to utilising waste efficiently and sorts, recovers, redirects and neutralises waste where possible, ensuring the safe disposal of residual waste at environmentally secure disposal sites. Waste must be managed in a manner that ensures liveable cities.

5. WMNZ wants to ensure that regional waste management networks are appropriately provided for within our resource management system. As part of this, major landfills (those which serve more than 150,000 people) must be recognised as nationally significant infrastructure and must not be unnecessarily constrained by the Freshwater Policy Documents.

6. As currently drafted, the Freshwater Policy Documents will impose significant practical restrictions on waste infrastructure, without achieving the policy outcomes that are intended. Amendments are required to the Freshwater Policy Documents to address WMNZ's concerns, as detailed below.

Who we are

7. WMNZ is New Zealand's largest waste and environmental services company, with collections, recycling, resource recovery, transfer and landfill disposal facilities and other waste management operations located across New Zealand. These operations include:

(a) Waste and recycling collection services - these include regular household (kerbside) and commercial collection services, and on demand services where collections are ordered by customers on an "as needed" basis.

(b) Recycling facilities - these facilities receive source-separated recyclables for further processing and subsequent shipment to a downstream processing facility.
(c) Downstream processing facilities – these facilities receive and process particular kinds of recyclables such as greenwaste, end-of-life tyres etc.

(d) Resource recovery facilities – these facilities receive construction and demolition materials from the construction industry. Various materials such as ferrous and non-ferrous metals, soil, brick, concrete and timber etc are recovered and recycled and residual waste is disposed of at a suitable cleanfill, managed fill or landfill facility.

(e) Refuse transfer stations – these facilities are multi-purpose and serve a wide range of different customers and waste management functions. They are used for the receipt, recovery, recycling and then subsequent transfer to an appropriate downstream facility of a range of organic, recyclable and non-recyclable materials.

(f) Landfill, cleanfill and managed fill disposal sites – these facilities provide for the secure disposal of residual waste materials received through the waste management system, which cannot otherwise be recycled or re-used. Large modern landfills serving urban areas provide a critical service, without which our major cities could not function.

Draft NPS-FM – application

8. WMNZ operates numerous stormwater detention and treatment ponds and leachate ponds within its facilities throughout the country.

9. Stormwater detention and treatment ponds impound stormwater behind an engineered structure, creating an artificial waterbody. They collect surface stormwater runoff so that this can be treated and contaminants removed before any discharge to downstream waterbodies.

10. The purpose of WMNZ's stormwater detention and treatment ponds is to collect surface stormwater runoff from waste management facilities. Stormwater treatment from significant infrastructure such as landfills and other waste facilities, involves several processes. This includes the reduction and removal of sediment by way of detention of water in a pond or series of ponds. Once in the pond, the velocity of water reduces, allowing the settlement/drop out of sediment before the cleaner surface water cascades into the next pond in the sequence (where the process is repeated). These treatment ponds are essential to ensuring that stormwater from our sites is of high-quality, prior to its discharge to downstream waterbodies, or to land. As discussed below, outflows from these ponds are monitored to ensure that the quality of the discharge will not have adverse effects on downstream aquatic habitats.

11. Leachate treatment ponds similarly impound water behind an engineered structure, to create an artificial waterbody. These ponds are designed to detain and treat the leachate (contaminated liquid) that percolates through the waste. Leachate ponds do not discharge to downstream waterbodies.
12. The Draft NPS-FM appears to apply to stormwater detention and treatment ponds and leachate treatment ponds. This is because of the broad definitions used for "freshwater", "water", and "waterbody".

13. The application of the Draft NPS-FM to stormwater detention and treatment ponds and leachate ponds is assumed to be unintended. From a policy perspective, the Freshwater Policy Documents are directed at ensuring New Zealanders can swim, fish, gather mahinga kai and enjoy our freshwater resources. These activities would not be appropriate in any treatment pond and these outcomes will not be achieved by applying the Draft NPS-FM to WMNZ’s stormwater detention and treatment ponds. Furthermore, the use of stormwater detention ponds are an integral part of a construction site’s erosion and sediment control measures, and the use of artificial detention ponds for these purposes should be enabled by any freshwater reform package rather than being further regulated or restricted.

14. For human health reasons, we carefully manage our stormwater detention and treatment ponds and our leachate ponds to completely prevent any unnecessary human contact. For stormwater detention and treatment ponds, these are also managed to prevent the discharge of water unless it complies with the strict water quality conditions imposed in our resource consents.

15. Modern landfills authorised under the Resource Management Act (“RMA”) have been subject to compliance conditions for stormwater discharges since they were first consented and commenced operations. For example, this has been occurring at the Redvale landfill since 1994. Over and above this, WMNZ monitors stormwater discharges continuously. For the Redvale landfill this involves continuous turbidity/sediment readings with grab samples taken and tested for numerous chemical contaminants at regular intervals. These results are then reported to an independent peer review panel and then to the regulator (Auckland Council) to demonstrate compliance with our consent conditions. An additional layer of regulation through the NPS-FM is not necessary for stormwater detention and treatment ponds for modern landfills.

16. The Draft NPS-FM contains only two exceptions. These relate to nationally significant hydroelectric infrastructure, and a qualified exception for the setting of target attribute states where a waterbody is affected by naturally occurring processes. Neither of these exceptions would apply to stormwater detention and treatment ponds or leachate ponds.

17. WMNZ accepts that point-source discharges from its stormwater detention and treatment ponds need to be subject to controls to ensure potential adverse effects on the downstream receiving environment are avoided, remedied or mitigated.

18. However, this can be ensured through resource consent conditions imposed on the discharge itself, and it is not necessary or practicable to impose the Draft NPS-FM obligations requiring the improvement of the quality of each waterbody within a Freshwater Management Unit (“FMU”) to WMNZ’s stormwater detention and treatment ponds. Rather, these obligations

---

1 Defined in the RMA, s 2 as “all water except coastal water and geothermal water”.
2 Defined in the RMA, s 2 as “(a) means water in all its physical forms whether flowing or not and whether over or under the ground; (b) includes fresh water, coastal water, and geothermal water; and (c) does not include water in any form while in any pipe, tank, or system”.
3 Defined in the RMA, s 2 as “fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area”. However, the Draft NPS-FM provides that “geothermal water” is excluded for the purposes of the NPS-FM.
4 Draft NPS-FM, Clause 3.23.
would result in additional costs for WMNZ and the relevant regional authorities, for no corresponding benefit in terms of achieving the policy outcomes of the Freshwater Policy Documents. Amendments are therefore required to ensure WMNZ’s stormwater detention and treatment ponds are exempted from the Draft NPS-FM’s requirements.

**Draft NPS-FM – narrow policy focus**

19. **The Draft NPS-FM** has one objective and 13 policies.

20. The objective is to manage freshwater in a way that prioritises the health and wellbeing of freshwater bodies; then prioritises the essential health needs of people; and thirdly prioritises the ability of people and communities to provide for their social, economic, and cultural well-being.

21. There is only one policy (13) that seeks to enable economic well-being, and give effect to part of the third priority of the objective. Proposed policy 13 provides:

   Communities are enabled to provide for their economic wellbeing while managing freshwater in a manner consistent with Te Mana o te Wai and as required by the national objectives framework and other requirements of this National Policy Statement.

22. WMNZ’s concern is that the Draft NPS-FM policy framework does not provide enough direction to regional authorities to enable waste infrastructure in their plans.

23. **The Draft NPS-FM’s 12 other policies** are focused on protecting and improving the quality of New Zealand’s freshwater resources. As set out above, WMNZ supports this goal. However, having only one policy out of 13 that relates to the economic well-being element of sustainable management risks directing regional authorities too far towards achieving environmental bottom-lines, at any costs.

24. There are no policies that require regional authorities to provide for the requirements of infrastructure in implementing the Draft NPS-FM. Sustainable management of resources cannot be achieved without enabling the necessary infrastructure to service communities and provide for their economic and social well-being.

25. In particular, high-quality waste infrastructure (along with roads, State Highways, electricity, water and wastewater, and other utilities) is an essential part of modern and liveable cities. The failure to recognise and provide for the needs of infrastructure within the Draft NPS-FM risks directing regional authorities towards prioritising only the achievement of freshwater quality improvement outcomes, without regard to the critical infrastructure that is also necessary to enable our social and economic well-being.

26. This issue can be remedied by providing additional direction in the Draft NPS-FM for regional authorities to actively provide for infrastructure, when undertaking freshwater planning. This will ensure freshwater quality outcomes are achieved, whilst not disenabling infrastructure development that is critical to meeting the broader economic and social needs of our communities.
The Draft NPS-FM requires regional councils to identify FMUs, and identify the compulsory values in Appendix 1A that apply to each FMU. A compulsory value that must be identified for each FMU, is the extent that each FMU supports a population of threatened species and is able to support the survival of that species.

WMNZ supports a compulsory value for FMUs. However, there will always be situations where the effects of activities within an FMU on threatened species cannot be avoided.

For example, threatened species are much more likely to exist in undeveloped rural areas than in urban areas. However, new landfills cannot be located in urban areas. They need to be located in valleys in rural areas, where the potential adverse effects can be appropriately managed through buffer zones separating landfills from sensitive receivers. The result is that the development of new landfills has the potential to have adverse effects on threatened species that cannot be avoided, at least within the footprint of a proposed new landfill development.

In WMNZ’s experience, while effects on native flora and fauna (including threatened species) from a new landfill may be unavoidable, these effects will generally be able to be remedied, mitigated, offset or compensated. This includes through the relocation of the threatened species to another location within the relevant FMU, so as to support their continued presence and survival within that FMU.

Further, it is absolutely critical that waste management infrastructure (including new landfills) is appropriately provided for by our resource management system. Urban development and growth in New Zealand will correspondingly increase the demands on our regional waste management networks, such that the future development and growth of this infrastructure will increasingly be required. A key part of this is protecting waste infrastructure from the adverse reverse sensitivity effects that result when new urban development locates in close proximity. This protection can only be achieved in the context of new landfills by enabling them to locate in rural areas where there is no existing urban development (and where the planning framework discourages urban development in the future).

As a result, WMNZ considers the Draft NPS-FM should be amended to provide additional direction to regional authorities to plan for situations where adverse effects on threatened species cannot be avoided, but where those effects can still be remedied, mitigated, offset or compensated. In particular, regional authorities should be required to enable activities where the relocation of threatened species is a viable option, so as not to constrain critical infrastructure from establishing in otherwise suitable locations where such effects cannot be avoided.

In addition, while WMNZ supports the use of compensation and offsetting, the scale of works that may be required by new landfills may mean that full compensation or offsetting is simply not practicable. This is because of how the phrase "no net loss" is understood and applied by ecologists, and in particular the use of multipliers in the formula used to calculate no net loss. While a "no net loss" outcome is appropriate for smaller scale, commercial or residential
developments, for large-scale regionally or nationally significant infrastructure, a more flexible approach should be taken. Accordingly, for nationally significant infrastructure WMNZ considers that the Draft NPS-FM and Draft NES-F should only require "no net loss" where reasonably practicable. The phrase reasonably practicable has been helpfully explained by the Environment Court in Royal Forest & Bird Protection Society Inc v Whakatane District Council:

[... "Practicable" has been held to mean "possible to be accomplished with known means or resources" and synonymous with "feasible," being more than merely a possibility and including consideration of the context of the proceeding, the costs involved and other matters of practical convenience. Conversely, "not reasonably practicable" should not be equated with "virtually impossible" as the obligation to do something which is "reasonably practicable" is not absolute, but is an objective test which must be considered in relation to the purpose of the requirement and the problems involved in complying with it, such that a weighing exercise is involved with the weight of the considerations varying according to the circumstances; where human safety is involved, factors impinging on that must be given appropriate weight.

Draft NES-F – nationally significant infrastructure

34. Under the Draft NES-F, nationally significant infrastructure means any or all of the following:

a) State highways;

b) the national grid electricity transmission network;

c) national renewable electricity generation facilities that connect with the national grid, other than the facilities of existing hydro schemes;

d) major gas or oil pipeline services (such as the pipeline from Marsden Point to Wiri, and high pressure gas transmission pipelines from Taranaki);

e) any railway (as defined in the Railways Act 2005);

f) rapid transit;

g) airports that have a runway used for regular air transport services by aeroplanes that have a seating configuration of more than 30 passenger seats;

h) commercial ports (as defined in Part A(6) of Schedule 1 of the Civil Defence Emergency Management Act 2002).

35. There is no provision for any part of the waste network in this definition, which is an unacceptable omission for the reasons discussed below. Nationally significant infrastructure is provided for within the NES-F through a discretionary activity status for a range of activities, whereas activities that fall outside that definition face the significantly greater hurdle of non-complying status.

---

These activities include vegetation destruction or earth disturbance carried out in, or within 10 metres of a wetland; earth disturbance for drainage or water take, in or within 100 metres of a wetland, where it would affect the wetland's water take levels; the infilling of a bed of a river or stream.
36. The "nationally significant infrastructure" definition should acknowledge infrastructure that has a critical function in serving large urban centres in New Zealand and which is locationally constrained, including major landfills. Landfills serving large urban (and rural) catchments are similar to the other "nationally significant" infrastructure listed in the proposed definition, due to their role at the top of regional waste networks, their critical role in the safe and efficient functioning of our cities, the significant limitations where they can locate (due largely to the need to avoid reverse sensitivity effects), and the unavoidable nature of the effects of those activities.

37. Constraints on where this kind of infrastructure can locate are only going to increase as a result of other Government reform initiatives. For example, the Government's discussion document on the National Policy Statement on Urban Development looks to "make room for growth in RMA plans." As explained in WMNZ's submission on the NPS discussion document, such an approach will only further limit the locations that are suitable for new landfills and other waste infrastructure.

38. To ensure landfills serving large urban catchments are appropriately provided for, WMNZ therefore seeks that the definition of "nationally significant infrastructure" in the Draft NES-F is amended to include reference to the "disposal facility" as defined in the Waste Minimisation Act 2008.

39. In doing so, WMNZ recognises that this definition needs to be limited only to facilities of truly national significance. A qualifier is therefore proposed such that a "disposal facility" will only be considered nationally significant for the purposes of the Draft NES-F where it serves a population of more than 150,000 people. The wording of the amendment sought by WMNZ is set out below.

i) disposal facility (as defined in the Waste Minimisation Act 2008), provided that the disposal facility serves, or will service at any time during the term of any resource consent that authorises the facility, a population of more than 150,000 people.

40. WMNZ considers that the addition of disposal facility to the definition of nationally significant infrastructure is appropriate and is entirely consistent with the other infrastructure currently specified in that definition in the Draft NES-F:

(a) Like the national grid, an appropriate, proximate and affordable waste disposal facility is an essential element to the proper functioning of New Zealand's major urban centres.

(b) Like airports, ports, State highways and railways, large waste disposal facilities are long term assets (> 50 years) which are particularly vulnerable to reverse sensitivity effects and "urban creep". This means that they need to be located within a rural area and protected in the long term through appropriate planning controls on surrounding land.

(c) Like the national grid, State highways, national renewable electricity generation facilities and airports, large solid waste disposal facilities inevitably have significant
adverse environmental effects which can be mitigated, offset and compensated, but
where a "no net loss" outcome is often not reasonably practicable.

41. For completeness, as currently proposed, the definition for nationally significant infrastructure
in the Draft NES-F appears only to apply in the context of Subpart 1 - Wetlands of Part 2.
However, "nationally significant infrastructure" is also used within Subpart 2 - River bed
infilling of Part 2. WMNZ considers this must be unintended, but recommends the Draft NES-
F makes clear that the definition of "nationally significant infrastructure" applies to both
Subparts 1 and 2 of Part 2.

Draft NPS-FM and NES-F - infilling of rivers and streams

42. "River" is defined under the RMA as:¹¹

   a continually or intermittently flowing body of fresh water; and includes a stream
   and modified watercourse; but does not include any artificial watercourse [...] ¹²

43. The Draft NPS-FM provides that the term "stream" has the same meaning as "river" under the
RMA, and the two terms are used interchangeably.¹²

44. Clause 3.16 of the Draft NPS-FM requires every regional council to make or change its
regional policy statement and plan to ensure that the infilling of stream beds is avoided, unless
there are no practical alternatives of providing for the activity and it is part of an activity that
meets the statutory conditions in clause 3.16(5). The Draft NES-F also provides that the
infilling of a bed of a river is a discretionary activity where it can meet the statutory conditions
in 18(1) and (2). Infilling is a non-complying activity under the Draft NES-F if the activity cannot
meet those statutory conditions.

45. As explained above in relation to threatened species, new landfills in New Zealand need to
locate in valleys in rural areas. Given community expectations for landscape and visual effects
and amenity in urban environments, and given general NZ topography, there is no other
realistic option for the location of this type of critical infrastructure, which is essential to
enabling and providing for modern, liveable cities including high-quality future urban growth.

46. Because of their unique locational requirements, the earthworks, construction and other works
associated with the development of new landfills often cannot avoid infilling permanent or
intermittent streams. Such streams will have to be diverted and / or infilled as part of initial
development works prior to the receipt of waste.

47. As set out above, landfills remain essential for providing for the needs of modern urban living.
These cannot be developed without some infilling of intermittent or continuous streams. There
are some locations (ie urban areas), where such infilling could be avoided, but landfills cannot
locate in urban areas. It is therefore critical that the Government's Freshwater Policy
Documents do not unduly constrain the construction and operation of new landfills.

48. To ensure that landfill development is not inappropriately constrained by the proposed
provisions for the infilling of streams, WMNZ recommends the following amendments.

¹¹ RMA, section 2 definition of "river".
¹² Draft NPS-FM, Part 1 Preliminary provisions, 1.6 Definitions "stream".
River / stream definition

49. The definition of river / stream as used in the Draft NPS-FM and Draft NES-F is very broad and encompasses all continuously and intermittently flowing bodies of water.

50. WMNZ recommends that, in relation to Draft NES-F Rule 18, this definition is amended so as to apply only to the infilling of continuously flowing waterbodies. This would recognise the inherent difficulties in providing for major landfills (and other nationally and regionally significant infrastructure) if the infilling of intermittent streams needs to be avoided. The definition of “river” for the purposes of Draft NES-F Rule 18 should therefore be as follows:

Definitions for subpart 2

In this subpart:

River is as defined in the RMA, but excluding intermittent streams.

51. A definition of “intermittent stream” should also be added to Rule 18. The Auckland Unitary Plan definition is as follows:

Stream reaches that cease to flow for periods of the year because the bed is periodically above the water table. This category is defined by those stream reaches that do not meet the definition of permanent river or stream and meet at least three of the following criteria:

(a) it has natural pools;
(b) it has a well-defined channel, such that the bed and banks can be distinguished;
(c) it contains surface water more than 48 hours after a rain event which results in stream flow;
(d) rooted terrestrial vegetation is not established across the entire cross-sectional width of the channel;
(e) organic debris resulting from flood can be seen on the floodplain; or
(f) there is evidence of substrate sorting process, including scour and deposition.

Rule 18(3) – Offsetting and compensation

52. The Draft NES-F states that any discretionary activity for river bed infilling must be subject to the following condition:

To the extent that the adverse effects cannot be avoided, remedied, mitigated, any residual adverse effects on the rivers must be offset to achieve a no net loss.

53. For landfills, there will be some situations where adverse effects of stream infilling cannot be avoided, remedied or mitigated. To meet the proposed condition in Rule 18(3), these adverse effects therefore need to be offset. However, under existing case law, offsetting must be
undertaken on a like-for-like basis, close to the point of impact of the adverse effects. This may not be possible in the context of a large landfill development located within a valley.

54. WMNZ therefore suggests that for offsetting of effects, this must be enabled within a broader catchment or FMU, so that offsetting can be fully and properly managed. Rule 18(3) should be amended to make clear that offsetting can occur within the same region, with a preference for offsetting to occur in the same FMU.

55. In addition, WMNZ suggests that proposed Rule 18(3) should also provide for the adverse effects of stream infilling to be "compensated". Environmental compensation does not need to replicate the same values that have been lost and can be more remote from where the adverse effects are experienced. Compensation is particularly appropriate in the context of major landfill developments, where the large footprint of the activity may mean that the adverse effects of infilling a stream can only be addressed via compensation (as opposed to offsetting).

56. WMNZ also considers that clarity is required as to what "no net loss" is intended to refer to in the context of proposed Rule 18(3). In the Draft NPS-FM, Policy 3.16(3) requires regional councils to ensure that the permanent diversion of a stream does "not result in a net loss in the extent or ecosystem health of a stream". WMNZ considers a similar approach should be adopted in the context of Rule 18(3), such that "no net loss" is to be achieved in terms of the relevant stream's ecosystem health. This would provide appropriate clarity as to what a discretionary activity consent holder under Rule 18 is required to achieve.

57. In addition, for the reasons discussed above at paragraph 33 in relation to threatened species, "no net loss" should be qualified by "where reasonably practicable".

58. Given the above, WMNZ seeks that Rule 18(3) is amended to state:

To the extent that the adverse effects cannot be avoided, remedied, mitigated, any residual adverse effects on the rivers must be offset or compensated within the same FMU to achieve a no net loss in ecosystem health, where reasonably practicable.

Alignment with other national direction and RMA reform

59. The Ministry is currently consulting or about to commence consultation, on a wide range of proposals to reform New Zealand's resource management system. This includes subordinate RMA documents relating to urban development, indigenous biodiversity and air quality, as well as amendments to the RMA itself.

60. WMNZ has a significant interest in all these reforms, which will impact on its existing and future operations. From WMNZ's perspective, it is crucial that these reforms are not developed in isolation from each other. Although the focus of these processes is necessarily different in each case, it is crucial that they are ultimately aligned in terms of how they provide for critical matters such as waste infrastructure.
Next steps

61. WMNZ would appreciate the opportunity to engage further with MfE on the matters set out in this submission in finalising the Freshwater Policy Documents.

WASTE MANAGEMENT NZ LTD:

Signature: [Personal details removed]

Date: [Personal details removed]

Address for Service:

Telephone:

Email: [Personal details removed]