

**Small Group submission on the proposed amendments to the
National Policy Statement on Freshwater Management 2011**

The Small Group of the Land and Water Forum has met twice to discuss the Government's proposals to amend the National Policy Statement on Freshwater Management 2011. It is grateful to Ministers Adams and Guy, who briefed the Group, as well as to officials from the Ministries of the Environment and Primary Industry who attended both its meetings. Members of the Group may make submissions of their own, but we have agreed to make this common submission on some important issues where there is a high level of agreement amongst us.

As a general proposition, we think that the NPS as amended reflects the architecture that the Forum recommended in its reports and in particular in its second report of April 2012. In proposing a detailed blueprint for establishing objectives and limits for New Zealand rivers, streams, lakes, wetlands and groundwater it breaks new ground and should provide a critical strengthening of our systems for land and water management. In its interim form¹, however, it contains some significant gaps, and we think that some important aspects of the proposals need to be modified in order to produce a credible, robust and workable reform.

We focused on 5 principal issues.

1. The preamble to the amended NPS states, "Overall freshwater quality within a region must be maintained or improved. This national policy statement allows some variability in terms of freshwater quality, including between freshwater management units, as long as the overall freshwater quality is maintained within a region." The Group's discussion focused on the nature of management units, and the difficulty of "allowing some variability in terms of freshwater quality, *including between freshwater management units*, as long as the overall freshwater quality is maintained within a region"²

In its second report, the Forum recommended that the meaning of "maintained or improved" should be further defined – "maintained" meaning that an objective could not be set in a band lower than its current state, "improved" meaning that it would be set in a band

¹ The government's discussion document describes a work in progress. The National Objectives Framework which it includes in its Appendix 2 is only partly populated, and contains (see the table on p.21) potential attributes "under consideration for 2016-2019," as well as other attributes "not applicable or not available in the near term."

² Emphasis added.

higher than its current state. The draft NPSFM does not provide a definition of the phrase. We think it should.

The draft NPSFM provides for regional councils to determine water management units as the appropriate scale form setting freshwater objectives and limits but does not offer criteria for their designation. We consider that water management units will need to be hydrologically coherent and geographically/morphologically coherent. To ensure that they are relevant to the communities in question, we also consider that the first question for the limit-setting process must be the scale that it will operate on. The process will not have legitimacy unless communities and iwi have bought in to this decision.

We see considerable difficulties in making water quality trade-offs between water management units, as the NPSFM seems to allow. In the first place, experience suggests that objectives for water management units within a region will not all be set at the same time. In the second, there is no guidance on how to assess whether or not water quality has been maintained or improved within management units or overall if trade-offs between water management units have taken place. Finally, it is unclear how trade-offs of this nature, involving different communities, would be given legitimacy and gain acceptance. We believe that these issues which go to the practicality of the approach need further consideration. They are connected to the question of exceptions which we go on to discuss.

2. Policies CA2 and CA3 both allow exceptions to national bottom lines established under the draft NPSFM. The Group is anxious that the exceptions regime is kept as tight as possible, but it notes that the approach that the government has taken differs in some important ways from the one that the Forum recommended. The draft NPSFM follows the Forum in allowing for exceptions to bottom lines to take account of naturally occurring conditions, but it does not make explicit provision for exceptions to derive an exceptional economic benefit, provided that a net environmental gain can be secured through compensatory action. This possibility seems to have been left to be dealt with under the rubric of “variability in terms of freshwater quality, including between freshwater management units” (NPSFM, pp.48-9) – but without any guidance on how this “variability” should be sought, managed or assessed. At the same time, the concept of “hydrologically altered catchments” which was an important element in the regime that the Forum recommended, has disappeared except as an historic category through the list that will be posted in Appendix 3.

Members also note that a critical element of the Forum’s recommendations, and one that the government has included in its draft, is that regional councils should be able to set the timetables for the achievement of national bottom lines. Under these circumstances, we consider that Policy CA3 is redundant and that the introduction of interim targets will create uncertainty and undermine the objective of maintaining or improving water quality. It should be removed. (While it is true that, on account for example of lags between the introduction of nitrogen into the land and water system and its appearance in a water way, water quality in a catchment may deteriorate before it improves, this issue can easily be

documented and dealt with, quite transparently, through setting a longer time-frame to reach the bottom line that the NPSFM stipulates.)

Finally, members noted the discrepancy between the wording of CA2ii (“the reversal of those impacts is not reasonably practicable, either physically or ecologically, even in the long term”) and the description of this provision in the summary material published at the same time, which refers to impacts which “can’t reasonably be fixed, even in the long term, *without creating worse environmental effects.*”³

3. The Group discussed the fact that as it stands at present the NPSFM does not contain numbers for several attribute states which are critical for assessing the ecosystem health of rivers: Macro Invertebrate Community Index (MCI), sediment and dissolved oxygen (except below point sources). Although the government has indicated that it will consider supplying these numbers in the future this is not a firm undertaking, and we are concerned that without immediate guidance on these attributes Councils’ approaches to assessing ecological health and setting objectives for rivers, streams and associated groundwater will lack consistency, coherence and certainty.

As to the MCI, we note that it is a key measure of river state which has been in use since the mid-1980s, has well established bands, and is monitored at over 1000 sites. It may be the best way of measuring *te ora o te wai*. Like some other attributes – periphyton cover for example – it will be affected by several constraining factors; but it provides a much fuller picture of ecological health for water managers. We acknowledge that there is still some work to be done, including on different readings from soft and hard bottom streams, and on approaches with low gradient, non-wadeable rivers and we recommend that the work on these topics be expedited with the objective of including MCI numbers for appropriate water bodies in this iteration of the NPSFM. (One participant cannot agree with this recommendation without knowing the criteria for listing in Appendix 3.)

As to sediment, it can of course occur naturally, and there are water bodies (in the MacKenzie lakes for example where the nature of the suspended sediment imparts the unique colour) where it may even be desirable. We know, however, that it is one of the most important and widespread problems associated with river health (and human health). While we are aware of the difficulties of providing a numeric without considerable extra work we think that a narrative objective in this iteration of the NPSFM is necessary to build consistency in the way councils approach the problem in the meantime. In its second report the Land and Water Forum recommended that the national framework should provide narrative objectives and technical guidance on all other parameters for which regional councils are to set numeric objectives. The NPSFM should require councils to set objectives for sedimentation and suspended sediment in setting their objectives for ecological health.

4. Finally, we considered at some length how the uses of swimming and drinking should be reflected in the document. We acknowledged that swimming was associated with more

³ Emphasis added.

than one attribute of water bodies (the level of clarity for example is important as well as the level of microorganisms and contaminants) and that swimming was a value which needed to be set regionally if there were not to be extensive exceptions.

The Forum's second report, however, asks the government to add the managing of the risks to human health from micro-organisms and toxic contaminants in all water bodies to the objectives of the NPSFM. Most of us believe that Objective A1 of the NPSFM itself needs to be amended to express the broad objective and needs to be written so as to cover not only secondary contact with fresh water, which the National Objective Framework prescribes as the national bottom line, but also primary contact where communities value water bodies for these purposes. The higher standard, even if it is not prescribed for all water bodies, needs to be included in the terms of the broad objective so that for water where communities swim, or from which they drink, appropriate limits can also be provided. We would welcome the chance to discuss this issue with you further.

In this connection, we note that the narrative contact recreation attributes in the proposed National Objective Framework are in fact the "beach grade" in the Ministry of Health/Ministry for the Environment guidelines, and reflect a combination of risk assessment and measurement. We understand that this linkage will be made explicit when the document is finalised and we think it is important that it should be.

In making these submissions we note a difficulty for some of our members arising out of part c. of Policy CA2. Those likely to seek to have freshwater management units in which they own infrastructure listed in Appendix 3 are concerned that they do not yet know the conditions for listing them. This uncertainty makes it hard for them to assess the implications of all the issues canvassed in this submission on their own businesses. The concept of "hydrologically altered catchments" which the Forum recommended, has disappeared except as an historic category through the list that will be posted in Appendix 3 and we believe that the criteria for listing in Appendix 3 should be proposed at once.