

SUBMISSION OF WAIPA DISTRICT COUNCIL ON THE FRESHWATER REFORMS

To: Water Submissions
Ministry for the Environment
PO Box 10362
Wellington 6143

1. INTRODUCTION

1.1 **Waipa District Council** (“Waipa DC”) welcomes the opportunity to make a submission to the Ministry for the Environment (“MfE”) on the proposed amendments to the National Policy Statement for Freshwater Management (“Freshwater NPS”) which are set out in the discussion document ‘*Proposed amendments to the National Policy Statement for Freshwater Management 2011: A discussion document*’ (“the Discussion Paper”) on behalf of:

- (a) The water users connected to its water reticulation systems; and
- (b) The communities and residents of the Waipa District.

1.2 It should be noted that the following comments are from staff at Waipa District Council, and do not necessarily represent the views of the Council itself. However this submission will obtain approval from the Service Delivery Committee of Council on the 11th February 2014, and we will notify you of any changes.

- 1.3 Waipa DC is a territorial authority and a municipal supply authority (“MSA”) with statutory duties, obligations and responsibilities to provide access to a reliable and safe supply of potable water for drinking and sanitation purposes to water users as well as ensuring adequate quantities of water is available to benefit the community, including fire fighting and commerce.
- 1.4 Waipa DC also made a submission to MfE in relation to its discussion document ‘Freshwater Reform 2013 and Beyond’ which addressed Waipa DC’s comments in relation to the broader package of reforms being proposed.
- 1.5 Waipa DC understands that MfE does not propose to hear submissions on the proposed amendments, but Waipa DC would welcome the opportunity to be heard if the opportunity arises given the complexity and importance of the issues that arise in the context of the Freshwater NPS.
- 1.6 It is noted that the proposed amendments do not address issues relating to an appropriate water allocation mechanism and Waipa DC understands that those matters will be addressed in a later stage of reform. However, Waipa DC wishes to reiterate the position reflected in its submission to MfE’s 2013 discussion paper on freshwater reform that it supports a more sophisticated allocation mechanism than the “first-in, first-served” approach in order to ensure that water can be secured for municipal supply to the Waipa District.
- 1.7 Waipa DC generally supports the submission lodged by Local Government New Zealand (“LGNZ”).

Scope of submission

- 1.8 Specifically, this submission addresses:
 - (a) Relevant background and context with respect to Waipa DC, including its obligations and responsibilities as a local authority and MSA and its freshwater management journey (Section 2);
 - (b) Examples of the types of issues that are faced by Waipa DC with respect to undertaking its water supply functions and responsibilities, in order to assist MfE to understand the impact of the Freshwater NPS and proposed amendments on Waipa DC and to provide context for the specific submissions which follow (Section 3); and;

- (c) Waipa DC's specific submissions in relation to the proposed amendments to the Freshwater NPS (Section 4).

Relief sought

- 1.9 While Waipa DC has sought specific relief to address its general submissions in the sections which follow, the relief sought by Waipa DC should not be limited to that specified below and Waipa DC generally seeks amendments to the Freshwater NPS which would address the concerns which are set out in this submission.

2. WAIPA DISTRICT COUNCIL

- 2.1 This section addresses relevant background to Waipa DC, including an overview of its general functions and responsibilities with respect to the supply of water to the residents and businesses of its district and its freshwater management "journey" in terms of its involvement in the promulgation of relevant planning instruments and resource consent processes.

Waipa District Council - overview

- 2.2 Waipa DC provides local government services in the Waipa District. Waipa District is predominantly a rural district located in the heart of the Waikato region. It has an approximate area of 147,000 hectares and a population of 47,000 (2011 estimate). The two largest towns in the district are Cambridge and Te Awamutu.
- 2.3 Waipa District is located in that part of the Waikato increasingly referred to as the Golden Triangle which is bounded by the metropolitan centres of Auckland, Hamilton and Tauranga. Unlike many rural districts, the population of Waipa District has been growing and it is projected to continue to grow.
- 2.4 The Waipa 2050 Project, which included a District Growth Strategy, Environment Strategy and Town Concept Plans, noted in 2011 that the combined population of Te Awamutu and Kihikihi was 12,700 and was anticipated to increase by 9,340 people by 2050, Cambridge is expected to increase by 12,460 bringing the population to 25,760 . By 2050, it is expected that an additional 27,000 people will be living in the Waipa District, bringing the total population to 70,000. While much of this growth is likely to be gradual, the district is expected to grow at a rate above that of the national average.

Municipal supply responsibilities – Waipa DC is a key stakeholder

- 2.5 Waipa DC has a range of functions and responsibilities under the Local Government Act 2002 (“LGA”), Health Act 1956 and other legislation which results in the need to apply the water taken to be used for a wide range of uses beyond water for drinking and sanitation purposes. Waipa DC has a fundamental interest in ensuring that it is able to meet its responsibilities in that regard and is therefore a key stakeholder in the context of the proposed amendments to the Freshwater NPS and the broader package of RMA and Freshwater Reforms.
- 2.6 One of the essential services Waipa DC provides involves the treatment, distribution and delivery of water to a broad range of highly dependent water users including individual citizens at one end of the water use spectrum to world scale business enterprises, such as Fonterra at the other. In that regard, one of Waipa DC’s fundamental roles is to supply water for the purposes of providing for the expected population growth outlined above and the economic growth required to sustain that population. Waipa DC is predominantly a water service provider as opposed to a water user and it is expected to advocate on behalf of all water users connected to its various networks.
- 2.7 A “portfolio approach” to the management of a municipal supply network is important in enabling Waipa DC to fulfil its functions under various legislation. In other words, Waipa DC needs to ensure that it is able to obtain all of the water required for municipal supply purposes, not just drinking water, because:
- (a) It is required to supply a wide range of uses in order to promote the health, safety and wellbeing of the community, including hospitals / schools / correctional facilities, fire fighting, public sanitary facilities, public facilities and amenities, provision to businesses, other household use and more. These uses of water are essential to the maintenance of the economic, social and cultural fabric of our communities; and
 - (b) It needs to manage the system as a whole and make decisions as to how water should be used to maximise the benefits derived having regard to the specific circumstances which apply; and

- (c) It needs to be able to plan for both population growth in the district and economic growth to support population growth, thus water for both economic and population growth are inextricably linked and go hand in hand.

2.8 Waipa DC currently holds six resource consents which authorise it to abstract up to 74,000 cubic metres of water per day from a number of water sources, including the Waikato and Waipa rivers. The resource consents relate to abstractions from catchments that the Waikato Regional Council (“WRC”) has identified as being either over allocated or fully allocated. All of Waipa DC’s resource consents (other than Te Awamutu, which has just been reconsented) are due to expire within the next ten years.

Freshwater management journey

2.9 Waipa DC plays a significant leadership role in the preservation and/or enhancement of some nationally and internationally significant freshwater bodies which are located in the Waipa District. These freshwater bodies include:

- (a) Numerous ecologically remarkable peat lakes;
- (b) Sections of the Waipa and Waikato Rivers and some its tributaries; and,
- (c) The internationally renowned Lake Karapiro and rowing facility.

2.10 Waipa DC is also a member of the Waikato River Municipal Users Group (“WRMUG”) which is a consortium of MSAs that take water from the Waikato River. WRMUG members share a common interest in securing municipal water allocations for the benefit and prosperity of the users, communities and towns they service and support.

2.11 As a member of WRMUG, Waipa DC has been closely involved in the preparation of regional policy relating to the management of the Waikato Region’s freshwater resources, particularly in relation to:

- (a) Variation 6 to the Waikato Regional Plan: Water Allocation (“RPV6”);
- (b) The Proposed Waikato Regional Policy Statement (“PRPS”); and
- (c) The “Healthy Rivers Plan Change”, which aims to change the regional plan to restore and protect the health of the Waikato and Waipa Rivers.

2.12 Of particular note, the Freshwater NPS came into force during the hearing of the appeals on RPV6. The planning experts and the Environment Court considered whether RPV6 gave effect to the Freshwater NPS (as regards water allocation, not water quality) and the Court determined that RPV6 does give effect to the Freshwater NPS.

2.13 As noted above, Waipa DC also submitted on the proposed Freshwater Reform package and intends to continue to remain involved in the Freshwater Reform process.

3. **WAIPA DC MUNICIPAL SUPPLY SCHEMES – OVERVIEW OF ISSUES**

3.1 This section provides an overview of the Te Awamutu and Hicks Road water supply schemes, in order to provide MfE with an understanding of the types of issues that arise in the context of consenting municipal water supply takes and the impact of the Freshwater NPS (and the proposed amendments) on municipal supply.

Te Awamutu Water Supply Scheme

3.2 Waipa DC applied in 2010 to the Waikato Regional Council (“WRC”) for new consents to take water in respect of the Te Awamutu Water Supply Scheme (“TAWSS”). The applications were heard in December 2012 and, in that regard, the provisions of RPV6 (which was made operative in April 2012) were the relevant planning provisions which applied. In other words, the Te Awamutu take was considered in light of the latest water allocation policy which gives effect to the Freshwater NPS and, in that regard, seeks to phase out over allocation by 2030.

3.3 The TAWSS take involves the abstraction of water from the Mangauika Stream and, once treated, the water is supplied to a population of approximately 12,200 including the Te Awamutu and Pirongia townships, farming and rural properties from Te Tahi to Te Awamutu, Tokanui village and the Fonterra dairy factory in Te Awamutu. The TAWSS was established for the purposes of domestic and general municipal water supply in the 1920s.

3.4 Waipa DC’s previous consents for takes from the Mangauika Stream authorised the abstraction of up to 22,700 cubic metres per day to meet a current peak demand of approximately 15,000 cubic metres per day.

3.5 The new consents continue to authorise the abstraction of that volume of water until 2030, at which time Waipa DC is required to reduce its take from the stream to 4,280 cubic metres per

day. The WRC's consideration of the take focussed on ensuring that the allocable flows established by RPV6 were met and the rationale for the decision was that WRC was required by the Freshwater NPS to ensure that the Mangauika Stream is not over allocated by 2030. The allocable flows established by RPV6 are essentially "default" flows, based upon a scientific "rule of thumb" rather than specific studies of the Mangauika Stream or the values associated with the stream.

- 3.6 The take and its environmental effects were not considered in the context of the wider catchment and at that time there was no discussion on the possibility of offsetting of environmental effects as the planning policy under which this consent was being heard was in its infancy and WRC focused on the individual effects on the Mangauika stream as opposed to taking a catchment approach. Waipa DC also felt that WRC focus was on the environmental issues as opposed to having a regard to the wider planning environment such as growth strategies, social wellbeing and infrastructure provisions
- 3.7 In order to reduce the take from the Mangauika Stream by 2030, Waipa DC will be required to find an alternative source of water to meet:
- (a) The shortfall of over 10,000 cubic metres per day to meet current requirements; and
 - (b) Additional water to meet growth requirements.
- 3.8 This represents a significant security of supply issue for Waipa DC. The additional water required is likely to need to come from the Waikato River catchment, despite the fact that WRC deems that entire catchment to be fully allocated (or will be once the applications currently in train are processed).
- 3.9 The cost of establishing new takes from the Waikato River catchment in order to make up the deficit to the Te Awamutu supply is likely to be in the order \$30 million, which Waipa DC has not currently budgeted for. In that regard, it is currently anticipated that the new infrastructure required will likely include:
- (a) A new treatment plant;
 - (b) A new reservoir; and

(c) Additional reticulation pipes and associated infrastructure.

3.10 The TAWSS has a present replacement value of \$56 million, and to upgrade current assets and meet drinking water compliance, a further \$10 million is scheduled in the 2012-22 Long Term Plan. The full capacity of the Te Awamutu water treatment plant is therefore likely to be redundant once the take is reduced, which does not represent sustainable management of a physical resource in terms of section 5 of the Resource Management Act 1991 (“RMA”). In addition, Waipa DC has incurred significant costs, in the order of \$300,000, in consenting the TAWSS.

3.11 Waipa DC’s experience in the context of the TAWSS underlies its general support for the proposed amendments to the Freshwater NPS which enable freshwater to be managed on a catchment or sub-catchment basis, rather than on an individual water body basis. This is set out further in the section which follows.

Hicks Road municipal supply takes

3.12 Waipa DC holds two resource consents to take water from springs located at Hicks Road, which authorise it to take 2,000m³ of water per day from each spring and which expires on 30 April 2021. The springs are piped at the point of exit from the ground; thus Waipa DC takes the full flow of the springs which, for the most part, equates to approximately 2,000m³ per day from each spring. The Hicks Road takes supply Cambridge and Karapiro.

3.13 Waipa DC’s predecessor, the Cambridge Borough Council (“the Borough”), acquired the springs via the Public Works Act and began taking water in 1926. Prior to that, the spring water would likely have entered the Waikato River, possibly near the location of the Hauoira Stream. However, as the full flow of the springs is taken and piped, the streams have ceased flowing and therefore no surface water body exists. The land over which the stream had previously flowed was converted to farm land and is now in private ownership. While remnants of a stream bed can be identified in relation to one of the springs, the streams have been non-existent for over 80 years and reinstating the streams would not be practicable and may result in adverse environmental effects, such as inundation and flooding.

3.14 Waipa DC is concerned that WRC will adopt a similar approach in the context of Hicks Road as it did with respect to TAWSS and require that Waipa DC reduce the Hicks Road takes to meet the

allocable flows established by RPV6 in order not to contravene the policies of the Freshwater NPS which require that over allocation be phased out and the policies of RPV6 which require that over allocation to be phased out by 2030.

3.15 If Waipa DC is required to reduce its take from the Hicks Road Springs to meet the allocable flows, the continued take from those springs would not be viable. Waipa DC would therefore be forced to find an alternative source of water which, again, is likely to be the Waikato River, and the existing Hicks Road infrastructure will become redundant.

3.16 For this reason, Waipa DC supports the proposed amendments to the Freshwater NPS which provide for exemptions to meeting the national bottom lines due to the impact of historical activities.

4. **WAIPA DC'S SUBMISSIONS**

4.1 This section sets out Waipa DC's submissions with respect to the proposed amendments to the Freshwater NPS.

National Objectives Framework – General support

4.2 Waipa DC generally supports the inclusion of a National Objectives Framework ("NOF") and, in particular, the provision for the particular values of each water body to be identified at a local level and clarification as to how freshwater objectives and limits are to be set. This is consistent with the submission made by Waipa DC on the Freshwater Reforms discussion document.

4.3 Waipa DC's submissions in relation to specific aspects of the NOF are set out below.

Clarity of drafting

4.4 Waipa DC is concerned that the complexity of the drafting of Policy CA1 renders the policy difficult to understand. Waipa DC submits that the policies of the Freshwater NPS need to be as clear as possible in order to enable regional councils to implement the policies with certainty and to avoid unnecessary litigation as to the appropriate interpretation of the provisions.

4.5 Waipa DC therefore requests that Policy CA1 be redrafted in a manner which clearly sets out the process to be followed in developing freshwater objectives.

Identification of values – Municipal supply

- 4.6 Waipa DC's submission on the Freshwater Reform discussion paper highlighted the omission of "municipal supply" from the proposed list of values. The proposed amendments now include "drinking water" as an "additional national value".
- 4.7 It is not clear from the explanatory text whether "drinking water" is intended to be interpreted narrowly, so that only water for drinking, is a national value or more broadly to include all values associated with potable water supplied by municipal supply authorities, including water for human health and sanitation (including washing, flushing toilets, etc) and other uses to which municipal water supply is put, including community uses (such as hospitals, education facilities, scientific institutions, fire fighting, swimming pools and recreational / amenity uses).
- 4.8 Waipa DC submits that all uses of water to which municipal supply is put are uses which are valued by communities across the country and should not, therefore, be omitted from the list of "additional national values" which must be considered in setting freshwater objectives. In particular, the municipal supply of water by territorial authorities and MSAs is a value associated with many freshwater bodies nationally and the value which municipal supply itself contributes to society should not be overlooked. In that regard, territorial authorities and MSAs have a broad range of legislative functions and responsibilities with respect to providing for the wellbeing and the health and safety of its citizens and it is important that all of the water required by an MSA to fulfil those functions is available to it and that particular uses are not singled out as more important than others.
- 4.9 Waipa DC also notes that water for "fire fighting" and for "irrigation" of sports fields and recreational areas are identified as uses associated with the "economic or commercial development" value. These are not economic or commercial activities. They are community uses of water and fall within the scope of municipal supply.
- 4.10 All the water supplies in Waipa District Council supply industrial, commercial and in the rural areas agriculture uses. An example of this is that the Te Awamutu and the Cambridge water supply networks supply Fonterra Dairy Factories. The Fonterra take is 40% of the total water supply for both of these schemes. The Fonterra Dairy factories in Te Awamutu and Cambridge

are of a vital importance to the local and regional economy, and support a vibrant community providing places of work for local residents.

- 4.11 Waipa DC submits that the Freshwater NPS should identify municipal supply as an “additional national value” and that the full suite of uses to which municipal supply is put be recognised. In particular, Waipa DC seeks that the “drinking water” value be replaced with the value “domestic and municipal supply”. This value would capture water taken by individuals for their reasonable domestic needs under section 14(3)(b) of the RMA as well as water taken by MSAs to support the needs of towns, cities and smaller settlements.
- 4.12 This is particularly important because several parties challenged the “portfolio approach” to the management of municipal supply in the context of RPV6 and argued that MSAs should only be able to obtain water for drinking purposes under the suite of provisions in RPV6 which provide for municipal takes. WRC rejected those arguments and that position was also endorsed by the Environment Court, so that the “portfolio approach” is now enshrined in RPV6. Waipa DC is therefore concerned that isolating drinking water as a value recognised by the Freshwater NPS, without recognising the full suite of uses to which municipal supply is put, will provide support for such arguments being made in the future, on the basis that municipal supply is not identified as a “national value”.
- 4.13 It is noted for completeness that the national values are largely derived from the preamble of the operative Freshwater NPS, which lists “community uses” as well as “drinking water”, but community uses are not carried through into proposed Appendix A.
- 4.14 If the “uses” concept is retained, Waipa DC submits that the uses associated with municipal supply should include, as a minimum:
- (a) Human health and sanitation;
 - (b) Community uses, including for education, recreation and amenity;
 - (c) Industrial and commercial uses; and
 - (d) Fire fighting.

“Values” and “uses”

- 4.15 Waipa DC is concerned that the relationship between and role of “values” and “uses” is unclear. In that regard, Appendix A identifies certain values but also includes explanatory text which lists uses which pertain to that value.
- 4.16 It is not clear whether the uses are intended to “limit” the value or are simply examples of the uses associated with the specified value. Waipa DC is concerned that the uses identified as relevant to each value are likely to be interpreted as being the only, or the most important, uses relevant to that particular value. This issue is particularly important in the event that the narrow scope of the drinking water is retained, rather than providing for municipal supply as a value, as requested above.
- 4.17 Waipa DC further submits that it is not clear what value there is in listing the uses at all, given that it is the value (not the “use”) that must be considered when identifying values for the water body.
- 4.18 Waipa DC submits that, as a minimum, the explanatory text confirm that the listed uses are examples only and are not intended to limit the generality of the defined value.

Exemptions to meeting “national bottom lines”

- 4.19 Waipa DC generally supports Policy CA2 which provides for certain exemptions from the requirement for freshwater objectives to be set at or above national bottom lines. In particular, Waipa DC supports the intent of Policy CA2(b), which allows an exemption where the impacts of historical activities have caused water quality to be below the national bottom line and it is not reasonably practicable to reverse those impacts, even in the long term. Waipa DC’s Hicks Road take is a good example of the type of historical activity which has impacted on a water body in a manner which is not reasonably practical to reverse. Other examples include where freshwater bodies have been piped for stormwater purposes. The exemptions therefore need to be sufficiently flexible to address urban systems in which water bodies have been piped for the purposes of water supply or stormwater management and where the cost of replacing infrastructure and reinstating the stream is simply impractical, uneconomical and unrealistic.

4.20 However, Waipa DC is concerned to ensure that the exemption clearly applies where historical modifications of water bodies alter them in such a way that the water body (or part of that water body) no longer exists in its natural state.

4.21 It is not clear whether infrastructure such as that at Hicks Road would fall within the exemption provided for by Policy CA2(c). The proposed amendments to the Freshwater NPS themselves do not stipulate what can be included in Appendix 3, but the discussion document (pages 27 – 28) provides some guidance in that regard. Policy CA2(c) appears only to apply to large existing infrastructure which make a significant economic contribution to the nation or to the region. While Waipa DC considers that all municipal supply infrastructure is significant, it is unlikely to meet that criteria. Waipa DC therefore submits that it is of fundamental importance that Policy CA2(b) makes it abundantly clear that the Hicks Road takes are the type of situation envisaged by Policy CA(2)(b).

4.22 Waipa DC requests that Policy CA(2)(b) be amended as follows:

“By every regional council ensuring that freshwater objectives for the compulsory values are set at or above the national bottom lines for all freshwater management units, unless:

b. both of the following apply:

i. impacts of historical activities in the freshwater management unit have caused the existing freshwater quality of the freshwater management unit to be below the national bottom line, including where the impact of those activities is such that a part of the freshwater management unit no longer exists in its natural state; and

ii. the reversal of those impacts is not reasonably practicable, either physically or ecologically, even in the long term.”

4.23 Waipa DC submits in the alternative that if Policy CA2(b) is not intended to capture the Hicks Road situation, then Policy CA2(c) should be amended to ensure that it does capture that situation. In that regard, Waipa DC submits that the criteria for being included in Appendix 3 should:

- (a) Specifically refer to municipal supply takes and stormwater management systems which have modified the quality of water bodies, including to the point where part of the water body no longer exists;

- (b) Should not be limited to infrastructure which makes a significant economic contribution to the region or nation but should apply to any infrastructure which has been established for the purposes of municipal supply or stormwater management; and
- (c) Should be included in the Freshwater NPS to ensure that the process is clear and transparent.

4.24 Waipa DC further submits that such decisions should be made at the regional level, rather than the national level, and that the First Schedule process is one by which sufficiently rigorous testing of a proposal can be undertaken.

4.25 Without limiting the generality of the above, Waipa DC submits that Policy CA2(c) should be amended as follows in order to address its concerns:

“(c) the freshwater management unit is listed in Appendix 3 meets the following criteria:

(i) it has been modified historically for the purposes of establishing infrastructure which is significant at a regional or national level; and

(ii) the need for an exception must arise because of limited efficient or effective management options for the significant infrastructure; and

(ii) the significant existing infrastructure affecting the water body must either enable economic benefits that have a significant impact on national or regional GDP; and

(iii) the economic benefits can only be realised if the objectives for the water body are set below bottom lines; or

(iv) it has been modified historically for the purposes of supplying water associated with a municipal supply scheme or for stormwater management purposes and that water or infrastructure is still required for that purpose.”

Freshwater management units

4.26 Waipa DC generally supports the proposed amendments which replace “freshwater body” with “freshwater management unit” for the reasons that are apparent from section 3, above. In that regard, Waipa DC supports the management of freshwater on a catchment or sub-catchment basis rather than on an individual water body basis because:

- (a) Focussing on individual water bodies can lead to perverse outcomes, such as that in the case of Waipa DC’s Te Awamutu take, where the policy direction to phase out over

allocation by 2030 will have a significant economic impact on a small community, put the security of municipal supply at risk (which may have adverse effects on health and sanitation) and render the capacity of existing infrastructure redundant – for little environmental gain.

- (b) A wider catchment basis for managing freshwater enables a holistic approach to be taken, which takes into account the specific uses and values of individual water bodies and allows for ongoing provision of those values and uses which are determined to be most important, while providing for the maintenance and enhancement of water quality on an “overall” basis. This approach would enable WRC to determine that the ongoing use of the Mangauika Stream or the Hicks Road springs for municipal supply is important and could continue, provided that the overall quality of water in the freshwater management unit (however that is defined) is maintained or enhanced, including via environmental offsetting.

4.27 Waipa DC further submits that policy guidance on how freshwater management units should be defined, particularly with respect to the relationship between surface water and groundwater, would be helpful.

4.28 Waipa DC suggests that the definition of “freshwater management unit” could be improved as follows:

*“**Freshwater management unit**’ is the water body, multiple water bodies or any part of a water body (i.e., catchment or sub catchment) determined by the regional council as the appropriate spatial scale for setting freshwater objectives and limits and for freshwater accounting and management.”*

Should the Ministry for the Environment require additional information in relation to this submission, please contact:

[withheld]

Yours faithfully

A handwritten signature in black ink, appearing to be 'A. D. G.', with a horizontal line extending to the right.

[withheld]