

ISSUES AND OPTIONS PAPER

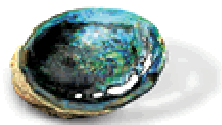
**PREPARED FOR CONSULTATION WITH LOCAL
GOVERNMENT SECTOR**

ON

FRESHWATER MANAGEMENT

AND

**PROPOSED NATIONAL POLICY STATEMENT
FOR FRESHWATER MANAGEMENT**



Local Government New Zealand

te pūtahi matakōkiri

CONTENTS

1. INTRODUCTION	4
Local Government New Zealand submission.....	4
Critical time frames	5
Table 1 – Time frames for developing LGNZ submission.....	5
Purpose and scope of paper	6
2. DESIRED OUTCOMES FROM A FRESHWATER NPS.....	7
Goals and objectives of the Proposed Freshwater NPS.....	7
What should a Freshwater NPS achieve?.....	7
Desired outcome and key issues to be addressed	8
3. DECISION MAKING	10
An integrated approach to decision making	10
<i>Issue10</i>	
<i>Proposed Freshwater NPS - analysis.....</i>	<i>11</i>
<i>Options.....</i>	<i>12</i>
<i>Table 2 – Systems based approach - options.....</i>	<i>13</i>
Cumulative effects	14
<i>Issue14</i>	
<i>Proposed Freshwater NPS – analysis.....</i>	<i>15</i>
<i>Options.....</i>	<i>15</i>
<i>Table 3 – Cumulative effects - options.....</i>	<i>15</i>
Uncertainty of information.....	16
<i>Issue16</i>	
<i>Proposed Freshwater NPS – analysis.....</i>	<i>16</i>
<i>Options.....</i>	<i>16</i>
<i>Table 4 – Uncertainty of information - options.....</i>	<i>18</i>
4. WATER ALLOCATION	20
Setting priorities	20
<i>Issue20</i>	
<i>Proposed Freshwater NPS – analysis.....</i>	<i>20</i>
<i>Options.....</i>	<i>21</i>
<i>Table 5 – Water allocation – setting priorities - options</i>	<i>21</i>
Managing over allocation of water.....	22
<i>Issue22</i>	
<i>Proposed Freshwater NPS – analysis.....</i>	<i>23</i>
<i>Options.....</i>	<i>23</i>
<i>Table 6 – Over allocation of water - options.....</i>	<i>24</i>
Transferability of water permits	24
<i>Issue24</i>	
<i>Proposed Freshwater NPS – analysis.....</i>	<i>25</i>
<i>Options.....</i>	<i>26</i>
<i>Table 7 – Transferability of water permits - options</i>	<i>26</i>
Infrastructure development.....	26
<i>Issue26</i>	
<i>Proposed Freshwater NPS - analysis.....</i>	<i>27</i>
<i>Options.....</i>	<i>27</i>
<i>Table 8 – Water efficiency through provision of infrastructure - options.....</i>	<i>28</i>
5. WATER QUALITY	29
Identification of key values.....	29
<i>Issue29</i>	
<i>Proposed Freshwater NPS - analysis.....</i>	<i>29</i>
<i>Options.....</i>	<i>32</i>
<i>Table 9 – Identification of key values - options</i>	<i>32</i>
Managing “at risk” catchments	33
<i>Issue33</i>	
<i>Proposed Freshwater NPS – analysis.....</i>	<i>33</i>

<i>Options</i>	34
<i>Table 10 – Managing at risk catchments - options</i>	34
6. TANGATA WHENUA.....	36
Proposed Freshwater NPS.....	36
Issues.....	36
Options.....	37
<i>Table 11 – Tangata Whenua issues - options</i>	37
7. IMPLEMENTATION ISSUES.....	38
Time frames.....	38
<i>Proposed Freshwater NPS</i>	38
<i>Issues</i>	38
<i>Options</i>	38
<i>Table 12 – Time frames - options</i>	39
Monitoring and reporting.....	39
Definitions and terms.....	40
Other matters to consider.....	41
<i>Relationship with other national documents</i>	41
<i>Funding of implementation</i>	41
<i>Other issues to be included in LGNZ submission</i>	42
APPENDIX A.....	43
APPENDIX B.....	44

1. INTRODUCTION

1.1 The Minister for the Environment has prepared a proposed national policy statement in relation to the management of New Zealand's freshwater resources, entitled "Proposed National Policy Statement for Freshwater Management" ("Proposed Freshwater NPS") (**attached as Appendix A**). Pursuant to section 46 of the Resource Management Act 1991 ("RMA"), the Minister has appointed a Board of Inquiry to inquire into, and report on, the Proposed Freshwater NPS. The Board of Inquiry notified the Proposed Freshwater NPS on 20 September 2008 and called for submissions. The submission period closes at 5.00pm on 23 January 2009.

1.2 The purpose of the Proposed Freshwater NPS is to set out objectives and policies for the management of freshwater resources as a matter of national significance that is relevant to achieving the purpose of the RMA.

Local Government New Zealand submission

1.3 *Local Government New Zealand* ("LGNZ") will prepare a submission on the Proposed Freshwater NPS on behalf of the Local Government sector. To inform the development of that submission, LGNZ and the Regional Resource Managers group jointly commissioned this issues and options paper for the purposes of consultation with the Local Government sector. This paper is not the LGNZ submission on the Proposed Freshwater NPS. Individual councils may also wish to use this issues and options paper to assist with the development of their submission.

1.4 The Regional Council and Territorial Authority Water Management Officials Group and RAC Water Management Subcommittee have reviewed this paper. (Members of these groups are listed at **Appendix B**.) Following consultation with the Local Government sector, those committees will consider the sector feedback and provide input to the LGNZ draft submission. The LGNZ National Council will then consider the draft submission, before it is approved by the National Council President, Lawrence Yule, the Vice President Kerry Prendergast and the National Council Environment Portfolio holder Stephen Cairns. The timeline for this process is set out in the table in the following section.

1.5 LGNZ seeks feedback from the sector on the following questions in order to inform the LGNZ submission:

- (a) Have the freshwater management issues been correctly identified? If not, what issues should be considered?

(b) Do you agree with the options identified to address those issues?

1.6 A summary of the feedback will be made available to the sector. It is important that we receive a much feedback as we can. The short time frames mean that we require a quick response.

Critical time frames

1.7 As noted above, the submission period on the Proposed Freshwater NPS closes on 23 January 2009. Due to typically limited availability over the Christmas break, the intention is to complete a final draft of the LGNZ submission by 19 December 2008, for approval by the National Councillors by 23 December 2008. Given the tight time frames, it is anticipated that the draft submission and alternative Freshwater NPS will be developed in parallel with sector consultation.

1.8 On that basis, the time frames for consultation with the Local Government sector and development of a submission are set out in the table below.

Table 1 – Time frames for developing LGNZ submission

Key Dates	
13 November	Consideration of issues and options paper by RAC Water Management sub-committee
18 November 2008	Issues and options paper circulated to Local Government sector for comment / consultation.
18 November – 2 December 2008	Consultation with Local Government sector
5 December	Sector feedback circulated
8 December 2008	Draft submission completed. Circulated to RAC Water Management sub-committee
12 December 2008	Draft submission discussed at Local Government New Zealand National Council Committee meeting
19 December 2008	Final draft submission completed and circulated to National Council for approval
23 January 2009	Submission lodged.

Purpose and scope of paper

- 1.9 Against that background, the purpose of this paper is to:
- (a) Outline the key freshwater issues that the LGNZ considers the Freshwater NPS should address;
 - (b) Provide an analysis of how the Proposed Freshwater NPS currently addresses those issues;
 - (c) Suggest options available to address those issues.
- 1.10 This paper addresses these matters on an issue by issue basis, with respect to the issues identified in the following section.

2. **DESIRED OUTCOMES FROM A FRESHWATER NPS**

Goals and objectives of the Proposed Freshwater NPS

2.1 The key goals of the Proposed Freshwater NPS (which are set out in the Preamble) relate generally to addressing constraints on availability of freshwater resources, addressing effects of discharges on freshwater resources, providing certainty in relation to competing demands and facilitating opportunities to increase benefits from use, meeting recreational aspirations for freshwater resources, addressing matters of national significance and improving integrated management of freshwater resources. The overall objectives of the Proposed Freshwater NPS relate to:

- (a) Enabling wellbeing of people and communities (Objective 1).
- (b) Ensuring integrated management of effects on freshwater (Objective 2).
- (c) Improving the quality of freshwater (Objective 3).
- (d) Recognising and protecting life supporting capacity and ecological values (Objective 4).
- (e) Addressing freshwater degradation (Objective 5).
- (f) Managing demand for freshwater (Objective 6).
- (g) Efficient use of freshwater (Objective 7).
- (h) Iwi and hapu roles and tangata whenua values and interests (Objective 8).
- (i) Ensuring effective monitoring and reporting (Objective 9).

What should a Freshwater NPS achieve?

2.2 LGNZ considers that Freshwater NPS represents an opportunity for the central government to identify national values and desired outcomes and assist local government decision makers to address the wide range of key freshwater management issues faced by local government.

2.3 In general, the objectives of the Proposed Freshwater NPS align with the LGNZ position paper¹. However, LGNZ considers that the Proposed Freshwater NPS

¹ http://www.lgnz.co.nz/projects/EnvironmentalSustainability/WaterManagement/Local_Govt_Position_Statement_on_a_NPS_on_Fresh_Water_Management.pdf

could have more clarity as to the policy issues that it seeks to address and could provide stronger national direction on issues or values that the Proposed Freshwater NPS seeks to achieve.

- 2.4 The Proposed Freshwater NPS adopts prescriptive approach to the process for the development of freshwater management policy through policy statements and plans. However, LGNZ considers that it does not adequately address issues related to the integrity and effectiveness of processes under the RMA. A key objective of a Freshwater NPS should be to minimise the amount of litigation that local authorities face. The Proposed Freshwater NPS could provide more effective support to local government decision-making under the RMA. In some cases, the Proposed Freshwater NPS may create further problems by undermining the effectiveness of local government to achieve the objectives of the Proposed Freshwater NPS.

Desired outcome and key issues to be addressed

- 2.5 In order to take advantage of the opportunity to address key freshwater management issues, LGNZ considers that a Freshwater NPS needs to accomplish the following:
- (a) Provide stronger policy direction and mandate to local government decision makers in respect of key freshwater management issues (which are discussed in this paper).
 - (b) Provide for an integrated approach to local government decision making, which takes into account the complex interrelationships between key freshwater management issues and the freshwater systems themselves.
 - (c) Provide flexibility for local authorities to address the key freshwater management issues in a manner which is appropriate to the region and district for which they are responsible.
 - (d) Provide clarity around whether there are (or are not) any national priorities or targets for freshwater management.
- 2.6 LGNZ considers that the key issues that should be addressed by a Freshwater NPS are as follows:
- (a) An integrated approach to decision making.
 - (b) Identification of key values.

- (c) Priorities for water allocation.
- (d) Address the efficiency of water use, including the role of infrastructure.
- (e) Provide guidance to address over allocation of water.
- (f) Provide guidance to address cumulative effects.
- (g) Assist local authorities to manage at risk catchments.
- (h) Provide guidance to decision making where there is a lack of information or an uncertainty of information.
- (i) Support transferability of water permits.
- (j) Provide for effective monitoring and reporting.
- (k) Address Tangata whenua issues.
- (l) Enable appropriate time frames for implementation.

2.7 These issues are addressed below under the following general “themes”:

- (a) Decision-making (section 3);
- (b) Water allocation (section 4);
- (c) Water quality (section 5);
- (d) Tangata Whenua issues (section 6); and
- (e) Implementation issues (section 7).

3. **DECISION MAKING**

An integrated approach to decision making

Issue

- 3.1 There are complex interrelationships that exist in the context of freshwater management, both in terms of the nature of freshwater resources and community interests and values. Those interrelationships must be taken account of in decision making at all levels and in respect of all scales of development and planning. Examples of those interrelationships are:
- (a) The allocation and use of surface water impacts upon the availability and quality of ground water and vice versa.
 - (b) Land use activities have an impact on water quality and on water quantity.
 - (c) Management of freshwater resources has social, cultural, economic and environmental implications.
 - (d) Over allocation of water affects water quality and low water quality in turn affects the ability to allocate water to a range of uses.
 - (e) The development and use of water related infrastructure can influence the efficiency of water use and affect water allocation on water quality.
 - (f) Freshwater management can impact upon water quality in the coastal marine area.
- 3.2 Freshwater management therefore needs to be viewed in an holistic manner in order to ensure that decisions made by local government, whether directly related to freshwater management or not, do not compromise the ability to manage freshwater issues (i.e., water quality, efficiency of use, etc.). In that regard, it is important that:
- (a) The interconnected nature of the freshwater resource is recognised, i.e. that freshwater systems include both surface water and ground water and are made up of complex geomorphological systems from the upper catchments to the coast.
 - (b) Local authorities adopt a integrated approach to decision-making under the RMA, which reflects the interconnected nature of freshwater resources, land use and the impact on the sustainable development of communities.

Proposed Freshwater NPS - analysis

3.3 The Proposed Freshwater NPS seeks to ensure the “integrated management of the effects of land use and discharge of contaminants” on the quality and quantity of freshwater (Objective 2). It does so via the following mechanisms:

- (a) Requiring Regional Policy Statements (“RPS”) to guide and direct regional and district plans to ensure integrated management of the effects of land use development by encouraging coordination and sequencing of infrastructure (for supply, storage and distribution of freshwater) and controlling adverse effects on the quality and quantity of freshwater resources (Policy 1(i)).
- (b) Requiring regional and district councils to include rules in their plans that require conditions on discharge permits, land use and subdivision consents for the integrated management of the effects of land use development and discharge of contaminants on water quality and quantity to be achieved (Policy 2(c) and Policy 3(b)(iii)).
- (c) Requiring regional councils to consider the sensitivity of freshwater resources to adverse effects including those associated with land use development and discharge of contaminants in the preparation of planning instruments (Policy 4(b)).
- (d) Requiring district councils to consider the importance of:
 - (i) Controlling land use development in order to minimise adverse effects on quality and quantity of water
 - (ii) Ensuring that industry good practices are applied to land use development to minimise those adverse effects and maximise the efficiency of water use
 - (iii) Ensuring that wastewater treatment and stormwater planning and implementation are undertaken in an integrated manner and at a rate that keeps pace with the rate of land use developmentsin the preparation of planning instruments (Policy 5).

3.4 The Proposed Freshwater NPS clearly provides some guidance with respect to “integrated management of effects”. However, the Proposed Freshwater NPS:

- (a) Does not appear to provide local authorities with a level of guidance beyond that provided by the RMA or in a manner that is more sophisticated than the level of analysis that most local authorities may have already undertaken.
- (b) Is overly prescriptive in relation to “integrated management” and may result in the exclusion of relevant issues because they have been omitted from the “list” in the Proposed Freshwater NPS.
- (c) Contains an implicit emphasis and focus on the management of surface water resources (with less emphasis on groundwater resources).
- (d) Does not expressly acknowledge the nature of the systems sought to be managed nor set out the interrelationships that exist in the context of freshwater management. The relationship between land use activities and water quality and quantity and the need to co-ordinate the provision of water related infrastructure is acknowledged in the context of “integrated management of effects”, but the relationship between surface water and ground water is not expressly recognised.
- (e) It refers to the “integrated management of effects” of land uses and discharges of contaminants, whereas the RMA refers to both “integrated management of resources” (section 30; section 59) and “integrated management of the effects of land use” (section 31) and therefore may be too narrowly focussed.
- (f) Does not contain a clear direction to adopt a broad, holistic and “integrated approach” to all levels of decision-making which recognises the intrinsic behaviour and interconnected nature of freshwater resources, including the complex interrelationships that exist in the context of freshwater management.

Options

3.5 The options identified by LGNZ to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 2 – Integrated management approach - options

	Option	Advantages	Disadvantages
1	Accept “integrated management of effects” approach adopted in Proposed Freshwater NPS.	<ul style="list-style-type: none"> • The term integrated management of effects is well known and used in the RMA. 	<ul style="list-style-type: none"> • Narrowly focussed. • May exclude relevant considerations. • Lack of clear direction for decision making. • No express recognition of nature of freshwater resource. • Approach is to prescriptive.
2	Amend the focus to include “integrated management of resources”.	<ul style="list-style-type: none"> • Maintains integrated management terminology. • Broadens the focus to integrated management of resources. 	<ul style="list-style-type: none"> • Lack of clear direction for decision making. • Focuses on “integrated management” rather than systems based decision-making.
3	Provide express recognition of interconnected nature of resource, including complex relationships, etc.	<ul style="list-style-type: none"> • Provide clarity as to nature of resource and key relationships to be considered to inform decision making. 	<ul style="list-style-type: none"> • Leaves the issues of implementation hanging – lack of clarity.
4	Provide a high level policy direction to adopt a integrated management approach to all levels of decision making.	<ul style="list-style-type: none"> • Provides a clear direction to adopt an holistic approach to all decision making. • Provides for flexibility in specific approach to be adopted on regional basis. 	
5	Provide direction to adopt an integrated management approach to decision making and specify the approach to be adopted, specific issues that arise and any specific assessment criteria.	<ul style="list-style-type: none"> • Provides a clear direction to adopt an integrated approach to all decision making. • Clearly identifies the matters that are required to be considered in decision making. 	<ul style="list-style-type: none"> • Does not enable flexibility of approach between local authorities to develop appropriate local approaches.

- 3.6 It is envisaged that the integrated management approach referred to above would be an overarching policy of the Freshwater NPS, which applies generally to all decision making at all levels in relation to freshwater management.
- 3.7 It is also noted local authorities are required, under the Local Government Act 2002 (“LGA”) to promote the social, economic, environmental and cultural well-being of their communities, taking a sustainable development approach. While the purpose of an NPS is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA (i.e. sustainable management), it may be considered appropriate by the Local Government sector that a Freshwater NPS acknowledge the obligations which arise under the LGA.
- 3.8 The preferred approach is a combination of Option 3 and 4. The rationale for that the combination of Options 3 and 4 would:
- (a) Expressly recognise the nature of the resource.
 - (b) Ensure that that the interconnections between freshwater resources are consider in RMA decision-making.
 - (c) Provide a clear direction for local authorities to adopt an integrated management approach in the context of freshwater management in the context of planning and decision making at all levels, including in terms of growth strategies, RPS’s, regional plans, district plans, resource consents and notices of requirement.
 - (d) Enable flexibility for local authorities to address key issues that arise in each region.

Cumulative effects

Issue

- 3.9 A key issue that arises both in the context of water takes and discharges is the potential for cumulative effects on water quality and quantity to arise, particularly where a series of discharges (particularly non-point discharges) or water takes are considered in isolation and in the absence of water quality standards and minimum flows, etc. Cumulative effects particularly arise in the context of permitted activities or where the available information is inadequate. In that regard, local authorities are concerned to avoid the “death by a thousand cuts” scenario.

Proposed Freshwater NPS – analysis

- 3.10 The Proposed Freshwater NPS generally addresses maintaining and enhancing water quality via Objective 3, Objective 4 and Objective 5 and associated policies (as discussed in more detail in Chapter 5 below) and (also discussed in Chapter 5 below) provides for the setting of water quality standards and minimum flows via Policy 1(a).
- 3.11 However, the Proposed Freshwater NPS does not provide any particular direction in relation to managing cumulative effects, although it is acknowledged that setting water quality standards and minimum flows will assist regional councils to establish “bottom lines”. These can assist in recognising the point at which cumulative effects have an unacceptable adverse effect on freshwater quality.
- 3.12 The Proposed Freshwater NPS does not otherwise provide a clear direction to regional councils to avoid the impact on water quality of cumulative effects nor provide a mandate to local authorities to refuse resource consent applications where the potential cumulative effects of an activity might compromise the minimum water quality standards and minimum flows, etc.

Options

- 3.13 The options identified to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 3 – Cumulative effects - options

	Option	Advantages	Disadvantages
1	Accept Proposed Freshwater NPS.	<ul style="list-style-type: none">• Sets limits which will assist to identify potential for cumulative effects to arise	<ul style="list-style-type: none">• Does not provide strong mandate / guidance
2	Refer to need to manage cumulative effects and provide high level policy direction to avoid cumulative effects on freshwater resources.	<ul style="list-style-type: none">• Provides direction / mandate to councils to manage cumulative effects	
3	As per option 2, but identifies/prescribes specific tools/mechanisms for addressing cumulative effects.	<ul style="list-style-type: none">• Provides mandate to use specified tools to manage cumulative effects	<ul style="list-style-type: none">• Prescription of tools may result in lack of flexibility.

- 3.14 At this stage, Option 2 is the preferred option, but LGNZ seeks sector feedback in relation to the additional tools (i.e. beyond setting water standards and minimum flows) that the Local Government sector considers useful to address cumulative effects.

Uncertainty of information

Issue

- 3.15 Local government decision makers face difficulties when making decisions in the face of a lack of scientific certainty as to the effects of activities on freshwater resources. The complex nature and behaviour of the freshwater resource, can lend itself to uncertainty in that regard, particularly in the context of groundwater. In that regard, the ability to measure, model and understand the resource can be limited.

- 3.16 Local authorities may face those difficulties when, for example:

- (a) Considering resource consent applications for water takes or discharges;
and
- (b) Setting minimum environmental flows and water quality standards.

Proposed Freshwater NPS – analysis

- 3.17 The Proposed Freshwater NPS provides no direction or guidance in relation to how decisions can be made in the face uncertainty of information. LGNZ's view is that it would be appropriate, and would assist local authorities to provide guidance in that regard.

Options

LGNZ seeks feedback from the Local Government sector as to whether it is appropriate that a Freshwater NPS guide local authorities to apply the “precautionary approach when making decisions in relation to setting limits and resource consent applications for takes and discharges in the face of uncertainty of information.

3.18 The “precautionary approach” is enunciated at Principle 15 of the Rio Declaration on Environment and Development (UNCED, 1992) as follows:

“Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

3.19 The precautionary approach has been adopted in the Fisheries Act 1996, which requires the Minister to set total allowable catches for each species of fish. The precautionary approach is captured in section 13(2A) of that Act, which states:

“For the purposes of setting a total allowable catch under this section, if the Minister considers that the current level of the stock or the level of the stock that can produce the maximum sustainable yield is not able to be estimated reliably using the best available information, the Minister must—

- (a) not use the absence of, or any uncertainty in, that information as a reason for postponing or failing to set a total allowable catch for the stock; and*
- (b) have regard to the interdependence of stocks, the biological characteristics of the stock, and any environmental conditions affecting the stock; and*
- (c) set a total allowable catch—*
 - (i) using the best available information; and*
 - (ii) that is not inconsistent with the objective of maintaining the stock at or above, or moving the stock towards or above, a level that can produce the maximum sustainable yield.”*

3.20 A similar approach could be adopted to setting minimum environmental flows (and allocation limits) and water quality standards.

3.21 The New Zealand Coastal Policy Statement 1994 (“NZCPS”) also refers to a “precautionary approach” in 3.3.1 as follows:

“Because there is a relative lack of understanding about coastal processes and the effects of activities on coastal processes, a precautionary approach should be adopted towards proposed activities, particularly those whose effects are as yet unknown or are little understood. The provisions of the Act which authorise the classification of activities into those which are permitted, controlled, discretionary, non-complying or prohibited allow for that approach.”

3.22 In that regard, the Environment Court in *Jackson Bay Mussels v West Coast Regional Council*² considered that the approach adopted in the NZCPS is different to the precautionary approach as set out in the Rio Declaration:

*“One can immediately see that there has been a change in the use of the word **precautionary** in the Coastal Policy Statement from the meaning ascribed to it in the Rio Declaration, namely that lack of full scientific certainty as to damage should not be used as a reason for postponing cost effective measures to prevent environmental degradation. There seems to have been a shift in meaning to a second meaning of **precaution**, being:*

Caution practised beforehand; circumspection (Collins Precise Dictionary 1990 ed).³

3.23 The Environment Court considered that the “precautionary approach” reflected in the NZCPS was simply the need for caution which is implicit in the RMA. While acknowledging the implicit need for caution, the Court acknowledged that the RMA is an enabling act and is not a “no risk” statute.

3.24 In other words, it is appropriate to take a cautious approach, but it is not necessary to prove that no adverse effects will arise. In such circumstances, an adaptive management approach (implemented via conditions of consent) may be appropriate and pragmatic. This approach could be applied to decision making in relation to the consideration of resource consent applications where there is an uncertainty of information.

3.25 The options identified by LGNZ to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 4 – Uncertainty of information - options

	Option	Advantages	Disadvantages
1	NPS remains silent as to how to approach decision making in the face of uncertainty.		<ul style="list-style-type: none"> • No guidance beyond RMA. • Litigation risk.
2	Freshwater NPS provides some guidance to local authorities when making decision in the face of uncertainty, i.e to apply precautionary/ adaptive management approach.	<ul style="list-style-type: none"> • Provides direction to local authorities. • Reduces litigation risk. 	

2 C077/04, paragraphs 126 – 129.

3 C077/04, paragraph 128.

3.26 In LGNZ's view, not dealing with this issue (Option 1) fails to acknowledge that in relation to some freshwater resources, information is incomplete and is likely to be so for some time into the future. Therefore, LGNZ's preferred option is Option 2, which could provide a mandate for local authorities to apply the precautionary approach to setting "bottom lines" and to exercise caution in the face of uncertainty of information.

4. WATER ALLOCATION

Setting priorities

Issue

- 4.1 Freshwater is a limited resource and one that is subject to increasing demand and intense competition between various sectors of the community, including, for example, municipal water supply, stock water, industry, irrigation, etc. Without policy guidance to the contrary, the general principle of “first come first served” applies to applications for water takes. That approach has implications for efficiency of use, but also has the potential to put the availability of freshwater resources for municipal water supply at risk and to increase litigation particularly with respect to applications for water takes.

Proposed Freshwater NPS – analysis

- 4.2 The Proposed Freshwater NPS provides some direction in terms of managing demands for freshwater and setting priorities in terms of water allocation insofar as it:

- (a) Aims to ensure that demand for freshwater is sustainably managed in a manner that has regard to, among other things, the available supply of freshwater (Objective 6).
- (b) Requires RPS’s to guide and direct regional and district plans to manage demands for freshwater in manner which, among other things, provides certainty (including prioritisation of consumptive use takes, if appropriate) and provides priority for “reasonably foreseeable domestic water supply” over other takes (with appropriate demand strategies) (Policy 1(i)).
- (c) Requires regional councils to consider (in preparing regional planning instruments) the needs of primary and secondary industries and communities for sustainable freshwater supply (Policy 4(c)).

- 4.3 The Proposed Freshwater NPS does not:

- (a) Set priorities for water allocation or require regional authorities to set priorities for competing demands in their region.
- (b) Establish as an overall objective the need to ensure availability of freshwater for municipal supply.

- (c) Provide priority for “domestic and municipal supply” as opposed to “domestic water supply”. In that regard, local authorities use municipal water supply to undertake a range of activities that are important to the proper functioning of communities. The separation of strictly domestic (i.e. human health and sanitation) requirements from all other uses of municipal supply has the potential to create issues with respect to the consenting process and devalues the broad range of municipal supply functions that are essential for the health and safety and social, economic and cultural wellbeing of communities. This issue has recently been addressed in Environment Waikato’s Regional Policy Variation 6: Water Allocation (Decisions Version) (“RPV6”) which defines “municipal water supply” as:

“Domestic and Municipal Supply: A reticulated supply publicly or privately owned where the net take is for the primary purpose of human drinking and sanitation needs, individual household use or for the purpose of meeting the responsibilities of municipal water supply authorities with respect to the supply of water with the exception of that component which is for the purpose of industrial or agricultural use (other than for human drinking and sanitary needs).”

Options

- 4.4 The options identified to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 5 – Water allocation – setting priorities - options

	Option	Advantages	Disadvantages
1	Accept Proposed Freshwater NPS as drafted.	<ul style="list-style-type: none"> • Does provide a priority for domestic supply. 	<ul style="list-style-type: none"> • Potential for “domestic water supply” to be narrowly interpreted. • No clear direction to set priorities. • Potential for extensive litigation if regional councils set priorities.
2	Proposed Freshwater NPS adopts definition and prioritises municipal supply subject to appropriate water demand management, and encourage regional authorities to determine priority for other users	<ul style="list-style-type: none"> • “Municipal water supply” captures all municipal activities. • Minimises litigation re priority for, and definition of, municipal supply. 	<ul style="list-style-type: none"> • Remaining litigation risk around other priorities.

	Option	Advantages	Disadvantages
	based upon the particular circumstances of each region.	<ul style="list-style-type: none"> • Enables flexibility in setting priorities on a regional basis. 	
3	<p>Proposed Freshwater NPS sets priorities which apply nationally, for example:</p> <p>(i) Municipal water supply (subject to demand management).</p> <p>(ii) Renewable electricity generation.</p> <p>(iii) Non-consumptive use.</p> <p>(iv) All other on first-in first-served basis.</p>	<ul style="list-style-type: none"> • Reduces litigation re priorities. • Clearly prioritises national interest matters. 	<ul style="list-style-type: none"> • Prescriptive; limited flexibility to address regional issues.

4.5 The Proposed Freshwater NPS defines “consumptive use”, but there is no definition of “non-consumptive use”. In this context, non-consumptive use is intended to mean:

“A surface water take where the net take has been assessed as zero effect on the availability of water for other users.”

4.6 At this stage, our preference is Option 2, but we are seeking feedback from the sector as to whether the type of guidance reflected in Option 3 is desirable.

Managing over allocation of water

Issue

4.7 Many water bodies across the country face over allocation, particularly due to increasing demand for freshwater and the impacts of existing allocations on degraded water bodies. The over allocation of water resources can affect both the values of water bodies and water quality. Over allocation can also impact upon the efficiency of the use of water resources and on the ability of water users to access freshwater.

4.8 LGNZ’s view is that a Freshwater NPS should provide direction to, or mandate, for local authorities to reduce and/or restrict existing water takes (a “claw back”) to address over allocation. Any policy should be broad enough to enable (and

reflect) a range of regional and catchment approaches to address allocation that can take into account seasonal and climatic variability and innovative solutions to those issues.

- 4.9 If the Freshwater NPS does provide a mandate, this will support existing RMA provisions relating to the review consent conditions to enable minimum levels, flows, rates or standards set by regional councils to be met (see sections 68(7), 128(1)(b) and 130(5)).
- 4.10 A significant issue in addressing over allocation is the phenomenon of “paper over allocation” (i.e. where a user has a right to more water than is actually used). In the event that transferability of water takes is introduced (discussed below), existing “paper” rights to an unused water take will have an economic value. This has the potential to create significant difficulties in respect of regional councils’ ability to “claw back” existing allocations.

Proposed Freshwater NPS – analysis

- 4.11 The Proposed Freshwater NPS (as noted above) provides some guidance in terms of managing demands for freshwater (via Objective 6 and Policy 1(i)). It also provides general guidance in relation to the efficient use of freshwater, for example, Objective 7 (Efficient use of freshwater) and policies which promote the efficient use of freshwater (including Policy 1(i)(3), Policy 2(c)(1), (2) and (3B), Policy 3(b)(2), Policy 6(a) and (c)).
- 4.12 The Proposed Freshwater NPS also requires RPS’s to guide and direct regional plans to set minimum standards of water quality and environment flows and levels (see Policy 1(c)), which will assist regional councils to address over allocation via a section 128 review, as outlined above.
- 4.13 The Proposed Freshwater NPS does not:
- (a) Establish an overall objective to avoid over allocation of water resources, which would provide a strong mandate for councils to use their powers to make rules that affect existing resource consents via review provisions.
 - (b) Provide policy direction to regional councils to address over allocation of freshwater resources either via section 128 reviews or otherwise.

Options

- 4.14 The options identified to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 6 – Over allocation of water - options

	Option	Advantages	Disadvantages
1	Freshwater NPS remains silent on addressing over allocation.	<ul style="list-style-type: none"> • RMA still enables review of allocation. 	<ul style="list-style-type: none"> • Lack of clear mandate / policy direction to address over allocation.
2	Freshwater NPS provides an overall objective to avoid over allocation and policy direction to address over allocation of freshwater resources, including reference to section 128 reviews.	<ul style="list-style-type: none"> • Provides clear mandate to address over allocation. • Enables flexibility in approach. 	<ul style="list-style-type: none"> • Litigation risk present re appropriate approach.
3	Freshwater NPS states how over-allocation will be addressed e.g. sets in place grandparenting.	<ul style="list-style-type: none"> • Reduces litigation risk. 	<ul style="list-style-type: none"> • Reduces flexibility to address issues on regional basis

4.15 The preferred option is Option 2. The rationale for that preference is that Option 2 provides strong guidance but retains some flexibility for regional councils to manage over allocation in consultation with their communities. That may involve, for example, setting common expiry dates for resource consents, setting appropriate time frames to take into account the economic and social implications of a new allocation regime or providing for local solutions to address these issues.

Transferability of water permits

Issue

4.16 LGNZ does not support the privatisation of water and would not support the concept of auctioning water. However, cap and transfer schemes can be a useful tool in the context of freshwater management, including for addressing water use efficiency and allocation issues, where available water is limited. In that regard, the RMA provides for the transferability of water permits as follows:

“136 Transferability of water permits

...

(2) *A holder of a water permit granted other than for damming or diverting water may transfer the whole or any part of the holder's interest in the permit—*

- (a) *To any owner or occupier of the site in respect of which the permit is granted; or*
 - (b) *To another person on another site, or to another site, if both sites are in the same catchment (either upstream or downstream), aquifer, or geothermal field, and the transfer—*
 - (i) *Is expressly allowed by a regional plan; or*
 - (ii) *Has been approved by the consent authority that granted the permit on an application under subsection (4).*
- (2A) *A transfer under subsection (1) or subsection (2) may be for a limited period.”*

4.17 Our view is that the separation of water use and water take permits is essential to the ability for a cap and transfer scheme to work. As noted above, any transition to a cap and transfer system must ensure the existing allocation regime meets freshwater management outcomes, before a transfer scheme is introduced.

Proposed Freshwater NPS – analysis

4.18 As noted above, the Proposed Freshwater NPS has, as one of its overall objectives, the efficient use of freshwater (Objective 7), and has implemented a number of policies in order to achieve that objective.

4.19 In relation to the transferability of resource consents specifically, Policy 1(i)(iii) provides for Regional Policy Statements to guide and direct regional and district plans to manage demands for freshwater in a manner which “promotes efficient freshwater use (including through transferability of resource consents, where appropriate)”, although it does not require regional councils to provide for transferability in regional plans.

4.20 The Proposed Freshwater NPS does not provide any further guidance on transferability of water resource consents, however as noted above, it does provide for the setting of minimum water standards and minimum flows, which could provide the “cap” that is required for a cap and transfer scheme to work.

4.21 LGNZ’s view is that the Proposed Freshwater NPS should at least provide support for regional councils to implement cap and transfer schemes to address issues relating to water efficiency and allocation and would be helpful to local authorities in exercising their freshwater management functions.

4.22 To repeat comments above, it is likely that existing consents would need to be rationalised before a transfer regime could be implemented.

Options

4.23 The options identified to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 7 – Transferability of water permits - options

	Option	Advantages	Disadvantages
1	Accept Proposed Freshwater NPS as drafted.	<ul style="list-style-type: none"> • Maximum flexibility for regional councils to address efficiency and allocation issues as they see fit. 	<ul style="list-style-type: none"> • Lack of direction / clear mandate. • Scope for extensive litigation.
2	Freshwater NPS requires regional councils to provide for transferability of water permits in regional plans (including separation of water take and use permits).	<ul style="list-style-type: none"> • Narrows scope for litigation. • Ensures that efficiency / allocation issues addressed. 	<ul style="list-style-type: none"> • Limited flexibility to deal with issues on regional basis.
3	Freshwater NPS provides some encouragement to regional councils to provide for cap and transfer schemes, including separating water take permits and water use permits in planning instruments.	<ul style="list-style-type: none"> • Provides clear direction / mandate for regional councils. • Enables flexibility. 	<ul style="list-style-type: none"> • Scope for extensive litigation remains.

4.24 A preferred option has not been identified. Before progressing any further, we are seeking feedback from the Local Government sector in relation to the options set out above. However, LGNZ's view is that that any transfer scheme must be focused on achieving outcomes identified by the community.

Infrastructure development

Issue

4.25 The way in which infrastructure for supply, storage and distribution of freshwater is provided, including the sequencing of land use development with investment in infrastructure can significantly influence both the efficiency of water use and the

allocation capacity. The Freshwater NPS could acknowledge that investment in infrastructure when considering priorities for allocation.

Proposed Freshwater NPS - analysis

- 4.26 The Proposed Freshwater NPS addresses water efficiency via Objective 7 and associated policies, including Policy 1(i)(iii) (managing demands to promote efficient use), Policies 2(c)(i) and 6 (conditions for efficient use) and Policy 5 (application of industry good practice to maximise efficient use).
- 4.27 The Proposed Freshwater NPS addresses infrastructure coordination and planning in the following manner:
- (a) Objective 2 is to ensure effective integrated management of effects of land use development, etc, “including by the co-ordination and sequencing of land use development with investment in infrastructure for supply, storage and distribution of freshwater” (Objective 2).
 - (b) Requiring RPSs to guide and direct regional and district plans to ensure integrated management of the effects of land use development by encouraging coordination and sequencing of infrastructure for supply, storage and distribution of freshwater (Policy 1(j)).
 - (c) Policy 1(i)(ii) provides priority for domestic water supply provided that appropriate demand strategies are established.
 - (d) Requires district councils, in preparing district plans, to consider the importance of ensuring that the planning for and implementation of infrastructure for water supply, wastewater treatment and stormwater are undertaken in an integrated manner and at a rate that keeps pace with the rate of land use development (Policy 5).
- 4.28 The Proposed Freshwater NPS does not address the planning and coordination of infrastructure for the purposes of enhancing efficiency of water use or acknowledge the role that infrastructure planning has to play in enhancing water efficiency.

Options

- 4.29 The options identified to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below. The preferred option is option 2 but LGNZ seeks feedback from the Local Government sector in relation to the options set out below.

Table 8 – Water efficiency through provision of infrastructure - options

	Option	Advantages	Disadvantages
1	Accept Proposed Freshwater NPS as drafted.	<ul style="list-style-type: none">• Flexibility to address issues.	<ul style="list-style-type: none">• Lack of guidance.
2	High level policy to consider infrastructure planning and development when considering freshwater management issues.	<ul style="list-style-type: none">• Provides direction but enables flexibility.	

5. WATER QUALITY

Identification of key values

Issue

- 5.1 One of the key objectives of the Proposed Freshwater NPS is to improve the quality of freshwater, which is clearly a matter of national significance. The identification of nationally important values in relation to freshwater resources may be a useful tool to guide local authorities in their decision making in order to prevent further degradation of, and indeed improve, the quality of freshwater resources.
- 5.2 The issues that arise in this context and which need to be considered in identifying key national values include:
- (a) Water bodies have a range of values associated with them. Some water bodies are 100% managed for municipal water supply, some water bodies are managed for electricity generation, some water bodies are particularly valued for fishing, swimming, etc. Other water bodies may have existing water quality greater than that required for fishing or swimming. Therefore, an approach based on national environmental bottom lines / targets or standards may result in perverse outcomes.
 - (b) Water bodies are at various levels of degradation. In that regard, some water bodies will take longer than others to attain a level at which key values are reflected in that water body. Similarly, the economic, and social implications of improving water quality for surrounding land uses may require that time frames need to be adjusted to manage land use transition in order to improve in water quality.
 - (c) Water bodies can be “naturally degraded” i.e. as a result of naturally occurring contaminants.

Proposed Freshwater NPS - analysis

- 5.3 The Proposed Freshwater NPS contains three key objectives in relation to the quality of freshwater, being Objectives 3 (improving the quality of freshwater), Objective 4 (recognising and protecting life supporting capacity and ecological values), and Objective 5 (addressing freshwater degradation). While not clearly identified, key values can be discerned from Objectives 3 and 4 and they are:
- (a) “Swimmability”; and

- (b) Protection of the life supporting capacity and ecological values for freshwater resources.

5.4 In order to address water quality, the Proposed Freshwater NPS also requires that:

- (a) Regional plans identify “notable values” of outstanding and degraded freshwater resources (Policy 1(b)).
- (b) Regional plans set freshwater quality standards and environmental flows and levels for all freshwater resources (Policy 1(a)), including for the protection of outstanding freshwater resources and the enhancement of degraded freshwater resources (Policy 1(c)).
- (c) RPS’s guide and direct regional plans to effectively manage land use development and discharges of contaminants to control adverse effects (Policy 1(h)).
- (d) Regional and district plans require conditions on discharge permits, land use and subdivision consents for protection against degradation of water quality and integrated management of effects of water quality (Policy 2(c)(iii)(A) and Policy 3(b)(i)).
- (e) Regional councils (in preparing an RPS or regional plan) to consider the value of “swimmability” to the community and the sensitivity of freshwater resources to adverse effects (Policy 4).

5.5 The Proposed Freshwater NPS does not:

- (a) Provide any firm time frames for achieving “swimmability” or protection of life supporting capacity and ecological values.
- (b) Provide a definition of “swimmability”, or recognise the importance of other values in the context of water quality. The use of the term “swimmability” is vague and its meaning is unclear. For example, the United States’ Fresh Water Pollution Control Act 1972 (known as Clean Water Act) clearly articulates the following key values for water quality (at section 1251(a)(2)):

“Water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.”

- (c) Provide any guidance in relation to measuring levels of degradation or improvement in water quality, for example establishing water quality baselines or benchmarks.
- (d) Provide clear guidance as to how local authorities are to treat “outstanding freshwater resources” and “degraded freshwater resources”. The only guidance in that regard is contained in the definitions of those terms. In that regard, “degraded freshwater resources” are those whose “notable values” have been so degraded as to require that priority be given to enhancement or restoration and “outstanding freshwater resources” are those whose notable values are such as to require that priority to be given to protection.⁴ No guidance is contained the policies to direct that those freshwater resources be prioritised in that sense except in Policy 1(c), which requires the establishment of freshwater quality standards and environmental flows and levels for all freshwater resources “including for the protection of notable values of any outstanding freshwater resources and the enhancement or restoration of notable values of any degraded freshwater resources”.
- (e) Acknowledge that water bodies may have a range of values in addition to environmental values, and that sustainable management of those resources requires a broader approach to improve water quality at a rate that meet the needs of the community.
- (f) Acknowledge that some water bodies may be naturally degraded and may not therefore be able to achieve key national values.
- (g) Contains no linkages to section 69 of the RMA (rules relating to water quality) and Schedule 3 of the RMA (which identifies water quality classes and sets standards for each class).

5.6 In summary, the Proposed Freshwater NPS contains unclear objectives, and establishes a process for identifying outstanding and degraded water bodies. It does not provide clear national direction as to what are national values and the expected outcomes of the NPS. In addition, while the proposed NPS sets out a process, it lacks overall direction or mandate to support regional decision making to improve water quality.

4 It is also noted that the method for doing so is circular, and therefore unclear, particularly insofar as regional councils are to identify “notable values” of outstanding freshwater resources and degraded freshwater resources (Policy 1(b)) but outstanding and degraded freshwater resources are in fact defined by their “notable values”.

Options

5.7 The options identified to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 9 – Identification of key values - options

	Option	Advantages	Disadvantages
1	Accept Proposed Freshwater NPS as drafted, re methods or time frames for achieving national values.	<ul style="list-style-type: none"> • Does define a process to identify values. 	<ul style="list-style-type: none"> • Lack of guidance. • Lack of clarity as to what is expected of local authorities.
2	Identifies national values and sets process and time frames for achieving those.	<ul style="list-style-type: none"> • Certainty of values and time frames. 	<ul style="list-style-type: none"> • Lack of flexibility to deal with values of individual water bodies.
3	Establish national values; establish process and time frames for identification of values of water bodies at regional level and time frames for meeting targets.	<ul style="list-style-type: none"> • Enables flexibility in establishing regional values consistent with national values / criteria. 	

5.8 Option 3 is preferred on the basis that:

- (a) Establishing “national objectives” will support local authorities to identify the values of freshwater resources, and develop appropriate processes and strategies to manage freshwater resources.
- (b) The identification of the values of particular water resources should be undertaken in consultation with the community
- (c) The development of processes and strategies to manage freshwater resources should be undertaken at regional level and in consultation with the regional community.
- (d) Provision (at a regional level) for setting time frames and standards to reflect national and community values is appropriate.

Managing “at risk” catchments

Issue

- 5.9 Local authorities face particular challenges managing catchments and water bodies where water quality or availability are “at risk”, in particular where there are rapid changes in land use. “At risk” catchments are those catchments which will become degraded (in terms of the definition of “degraded freshwater resources” in the Proposed Freshwater NPS) if the regional council does not act within a short time frame.
- 5.10 It is difficult for local authorities to respond quickly to problems that arise in relation to water quality and availability, particularly where the environment / catchment is changing at a rate that local government’s current tools are not equipped to address.

Proposed Freshwater NPS – analysis

- 5.11 While the Proposed Freshwater NPS generally addresses the freshwater management issues that, if left unchecked, could result in catchments becoming “at risk”, and requires the identification of “degraded freshwater resources”, the Proposed Freshwater NPS lacks any direction / guidance as to how to identify and manage “at risk” catchments or a definition of an “at risk” catchment.
- 5.12 The Proposed Freshwater NPS implies that priority should be given to the enhancement or restoration of “degraded freshwater resources” but not those that are “at risk” of becoming degraded. In any event, that implication is only contained in the definition of degraded freshwater resources and not in the objectives and policies of the Proposed Freshwater NPS itself.
- 5.13 The requirement to set minimum water quality standards and minimum environmental flows will assist local authorities to use the review “tools” (as discussed in Chapter 7).
- 5.14 The Proposed Freshwater NPS does not:
- (a) Identify the management of “at risk” catchments as a priority.
 - (b) Assist in identifying “at risk” catchments (except to the extent that “notable values” of degraded freshwater resources are to be identified), including specification of criteria for determining “at risk” catchments.

- (c) Provide any guidance or provide a strong mandate to local authorities as to how they might respond quickly to address issues arising in at risk catchments.

Options

5.15 The options identified to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 10 – Managing at risk catchments - options

	Option	Advantages	Disadvantages
1	Accept Freshwater NPS as drafted.	<ul style="list-style-type: none"> • Maintains ultimate flexibility to address issues on a region by region basis. 	<ul style="list-style-type: none"> • Lack of guidance.
2	Freshwater NPS provides high level policy guidance to regional authorities to identify and manage at risk catchments.	<ul style="list-style-type: none"> • Provides some guidance, identifies the issue. • Flexibility to address issues on region by region basis. 	<ul style="list-style-type: none"> • No strong guidance. • Litigation risk re approach.
3	Freshwater NPS identifies the management of at risk catchments as a priority; specifies criteria for determining at risk catchments and deems criteria into regional plans.	<ul style="list-style-type: none"> • Minimises litigation risk. • Strong direction. 	<ul style="list-style-type: none"> • No flexibility in approach.
4	Freshwater NPS identifies options for responding quickly to issues arising in at risk catchments.	<ul style="list-style-type: none"> • Provides strong mandate. 	<ul style="list-style-type: none"> • May be limited by existing legislative provisions e.g. schedule 1 processes.

5.16 The preferred option is Option 2 which will identify management of at risk catchments as a priority and provide a strong mandate for local authorities to address issues arising in those catchments. This option recognises that the appropriate approach to managing at risk catchments is particular to each local authority.

5.17 It is noted that it may be appropriate for “at risk” catchments to be addressed via alternative means, such as National Environmental Standards or amendments to

the RMA (e.g. to enable regional authorities to impose a moratorium on resource consent applications). LGNZ seeks feedback from the sector in that regard.

6. TANGATA WHENUA

Proposed Freshwater NPS

6.1 The Proposed Freshwater NPS seeks to ensure the involvement of both iwi and hapu and that Tangata Whenua Values and Interests are identified and reflected in the management of freshwater resources (Objective 8). In that regard, the Proposed Freshwater NPS requires that:

- (a) RPS's guide and direct local authorities as to the involvement of iwi and hapu in the management of and decision making in relation to freshwater resources and guide and direct regional and district plans in relation to the recognition of tangata whenua values and interests in relation to all freshwater resources.
- (b) District and regional councils consider tangata whenua values and interests in the preparation of district and regional planning instruments.
- (c) Local authorities to make publicly available a record of the process used to identify tangata whenua values and interests in freshwater resources, including the identification of relevant iwi and hapu.

Issues

6.2 The key issues that arise in that regard are:

- (a) The number of hapu in each district / region can be numerous (in some circumstances, in the hundreds) and the obligation on local authorities to involve both iwi and hapu is onerous in terms of available resources.
- (b) The process identified in the Proposed Freshwater NPS for involvement does not address capacity and capability of iwi / hapu to engage meaningfully in RMA decision-making.
- (c) The process identified in the Proposed Freshwater NPS overrides existing governance arrangements and reduces flexibility to develop appropriate processes for Maori to engage with their local councils in RMA processes.
- (d) The use of the terms "iwi" and "hapu" is inconsistent with the RMA, which refers to "tangata whenua".

6.3 LGNZ acknowledge that tangata whenua involvement in the management of freshwater resources should be a level that recognises iwi and hapu interests.

The concern is that the provisions as currently drafted are unclear and overly onerous on both hapu and local authorities and will be difficult to effectively implement.

- 6.4 It is also noted that “Tangata Whenua Values and Interests” is a broad term is not defined and it is uncertain as to what is meant by “interests”, e.g. economic interests, ownership, etc.

Options

- 6.5 The options identified to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 11 – Tangata Whenua issues - options

	Option	Advantages	Disadvantages
1	Accept the Proposed Freshwater NPS as drafted.	<ul style="list-style-type: none"> • Maximises iwi and hapu involvement. 	<ul style="list-style-type: none"> • Onerous on both iwi / hapu and local authorities. • Uncertain what capacity and capability there is to implement the NPS requirements
2	Accept the obligations as currently proposed, but note the resource problems with that approach and request funding for implementation from Central Government.	<ul style="list-style-type: none"> • Resource issues for local authorities may be ameliorated. 	<ul style="list-style-type: none"> • Does not address resource / capability issues for hapu.
3	Amend the current drafting to reflect an obligation to involve iwi or “tangata whenua”, but not hapu.	<ul style="list-style-type: none"> • Increases certainty for local authorities. • Ameliorates resource issues for local authorities. 	<ul style="list-style-type: none"> • Does not demand maximum iwi / hapu involvement.

- 6.6 At this point a preferred option has not been identified, and LGNZ seeks the views of the Local Government sector, as to the best way forward.

7. IMPLEMENTATION ISSUES

Time frames

Proposed Freshwater NPS

- 7.1 The Proposed Freshwater NPS requires that regional and district plans are notified within 40 days of an RPS (or change or variation to an RPS) that give effect to the Freshwater NPS being made operative.
- 7.2 The time frames proposed in the Proposed Freshwater NPS for the notification by regional and district councils of proposed plans, changes or variations to give effect to the Freshwater NPS and regional policy statements are unreasonable and unrealistic. Further, those time frames do not recognise the hierarchy of planning instruments and provides scope for key freshwater issues to be addressed inconsistently with regional and district planning instruments.

Issues

- 7.3 In that regard, LGNZ is concerned that by concentrating on process, local government will be unable to apply its resources to improving water quality because its resources are being applied to preparing plan changes and variations. There is also likely to be a significance cost involved in bringing forward plan changes to meet the time frames set out in the Proposed Freshwater NPS with a consequent impact on human resources. In any event, between 2008 -2012, the majority of Regional Policy Statements will require review in accordance with the Act.
- 7.4 However, local authorities will need to review their plans, to ensure they are giving effect to the Freshwater NPS. Some regional and district plans have already recently addressed some of the issues addressed in the Proposed Freshwater NPS. The Freshwater NPS should allow any future reviews to take place, as they are required. However, it may be appropriate to require local authorities to review their planning instruments to ascertain whether plan changes are required.

Options

- 7.5 The options identified by LGNZ to address this issue, including an analysis of the advantages and disadvantages of each option, are set out in the table below.

Table 12 – Time frames - options

	Option	Advantages	Disadvantages
1	Accepting the Proposed Freshwater NPS.		<ul style="list-style-type: none"> • Unrealistic time frames. • Heavy costs, including human resources.
2	Make appropriate changes to the time frames in the Proposed Freshwater NPS to reflect reasonable and realistic time frames and provides for regional plans to be amended before district plans are amended.	<ul style="list-style-type: none"> • Realistic time frames. • Certainty. 	<ul style="list-style-type: none"> • Does not acknowledge that some plans recently amended to address issues.
3	Freshwater NPS identifies key objectives and/or policies that must be taken into account at the time of the next review.	<ul style="list-style-type: none"> • Minimises litigation risk. 	<ul style="list-style-type: none"> • Lack of flexibility.
4	Freshwater NPS provides for regional councils to set time frames for reviewing regional and district plans in regional policy statements.	<ul style="list-style-type: none"> • Flexibility. • Chance to “get it right”. 	

7.6 The preferred option is a combination of Options 3 and 4. We are seeking further feed back from the Local Government sector in that regard.

Monitoring and reporting

7.7 One of the objectives of the Proposed Freshwater NPS is that local authorities monitor and report in respect of the key objectives of the NPS. In that regard. Objective 9 states:

“To ensure that regional councils and territorial authorities undertake effective monitoring and reporting of the matters specified in objectives 1 – 8.”

7.8 That objective implies that “state of the environment” reporting is required. However the policies only require monitoring and reporting on conditions of consent (see policy 2(c), paragraph 4; policy 6(e)) and rules (see policy 3(c)) and not the objectives of the Proposed Freshwater NPS as set out in Objective 9. Thus, there appears to be a mismatch between Objective 9 and the associated policies.

- 7.9 LGNZ seeks the views of the local government sectors as to whether:
- (a) The monitoring and reporting requirements of the Proposed Freshwater NPS are likely to be effective achieving Objective 9.
 - (b) “State of the environment reporting” should be required to be undertaken by regional councils.

Definitions and terms

7.10 There are a number of new terms introduced by the Proposed Freshwater NPS. Issues in relation to the definitions are set out below.

7.11 The key issues identified are as follows:

- (a) “Land use development” – The definition appears to relate to changes in land use rather than existing land uses. What are the implications that arise?
- (b) “Notable values” – As discussed in chapter 5.
- (c) “Environmental flows and Water Levels” – Definition is different to that contained in the National Environmental Standards for Ecological Flows and Water Levels.
- (d) “Industry good practice” – The Proposed Freshwater NPS refers throughout to “industry good practice”. There is no definition of this term. Should it be defined? Should the reference be to “industry best practice”? Is a reference to industry good or best practice appropriate in the context of water quality?
- (e) “Tangata Whenua Values and Interest: - Appears capitalised throughout the Proposed Freshwater NPS but is not defined. Should the Freshwater NPS contain a definition in that regard?
- (f) “Freshwater Resources” – Definition excludes ephemeral streams and artificial water courses. This is also a new term, which differs from the definition of “water bodies” in the RMA.

7.12 A key issue to consider is that the Proposed Freshwater NPS proposes to introduce new terms that are not referred to in the RMA and the implications that may arise from that, for example, that there may be a process of litigation to determine the meaning of those terms.

- 7.13 LGNZ seeks the views of the Local Government sector in relation to these matters.

Other matters to consider

- 7.14 The purpose of this section of the paper is to set out other matters that may require further consideration and seek the feedback of the Local Government sector in that regard.

Relationship with other national documents

- 7.15 Central government has recently issued a number of proposed national policy statements and proposed national environmental standards which address resource management issues that address matters related to the management of freshwater resources or are otherwise interrelated with the management of freshwater resources.
- 7.16 The integration and linkage between the Proposed Freshwater NPS and these other national documents is critical. A recent example was the Proposed National Environmental Standard on Ecological Flows and Water Levels, which appear to address similar matters to the Proposed Freshwater NPS especially with respect to setting minimum flows, etc. It will be important to ensure that they are consistent (including in terms of common language and definitions of key terms).
- 7.17 Another significant example is the Proposed National Policy Statement on Renewable Electricity Generation. That NPS recognises that renewable electricity generation is a matter of national significance and provides some guidance as to decision making in that regard. Some of the issues that arise in relation to electricity generation relate to issues with respect to freshwater management, also identified as a matter of national significance via the Proposed Freshwater NPS e.g. the priority of users of freshwater. In that regard, municipal water suppliers and hydro-electricity generators may compete for freshwater but the Renewable Electricity Generation NPS does not address that issue.

Funding of implementation

- 7.18 Implementation of the Proposed Freshwater NPS will impose significant costs on local authorities. In that regard, the Freshwater NPS requires a significant amount of work to be undertaken, including preparation of regional policy

statements, regional plans (or changes to those plans) and district plans (or changes to those plans) and significant scientific research that will inform those policy statements and plan changes. The issue that arises in that context is the source of the funding to implement the Freshwater NPS.

7.19 Central Government has significant funding resources that can and will be applied to freshwater management. Lack of funding often has a negative impact on the ability to address freshwater management issues. LGNZ proposes to submit that the central government provide funding for the implementation of the Freshwater NPS and seeks the feedback from the Local Government sector in that regard.

Other issues to be included in LGNZ submission

7.20 LGNZ also proposes to make a submission to the effect that Central Government needs to align other activities that it currently undertakes which are related to freshwater management to the objectives of the Freshwater NPS such as sewage works schemes, science funding, etc.

7.21 LGNZ would also like to address the following matters in the submission:

- (a) Guidance as to when Central Government should/will make submissions on key projects.
- (b) Guidance as to when Central Government should/will use the call-in process.
- (c) What matters should trigger funding for clean up of water bodies, such as Lake Rotorua and Lake Taupo. At the moment, it appears that funding is provided on an ad-hoc basis.
- (d) In what circumstances will Central Government develop national environmental standards?
- (e) What will trigger Central Government to make changes to the RMA?
- (f) How local authorities can work with Central Government to adopt and promote a “whole of government approach”

7.22 LGNZ seeks feedback from the local government sector in respect of any other matters that it considers should be included in the submission to the Board of Inquiry for recommendation to Central Government.

APPENDIX A

Proposed National Policy Statement for Freshwater Management

APPENDIX B

1. Regional Council and Territorial Authority Water Management Officials Group Members:

- (a) Alastair Smaill (ARC);
- (b) Hugh Blake-Manson (Selwyn DC);
- (c) Ken Taylor (ECAN);
- (d) Peter Higgs (Gisborne DC);
- (e) Robert Brodnax(EW);
- (f) Tim Harty (HCC);
- (g) Selva Selvarajah(ORC);
- (h) Toney Phipps (NRC); and
- (i) Phillip Eyles (LGNZ).

2. RAC Water Management Subcommittee Members:

- (a) Bede O'Malley (Ashburton District Council);
- (b) Bryan Jenkins (ECAN);
- (c) Clare Crickett (EW);
- (d) Dianne Hale (North Shore City Council);
- (e) Fran Wilde (Greater Wellington Regional Council);
- (f) Garrick Murfitt (Horizons Regional Council);
- (g) Graeme Martin (Otago Regional Council);
- (h) Jim Palmer (Waimakariri District Council);
- (i) Kerry Burke- Chair (Environment Canterbury);
- (j) Lawrence Yule (Hastings District Council);
- (k) Michael McCartney (Horizons Regional Council);
- (l) Peter Buckley (Environment Waikato);
- (m) Richard Kempthorne (Tasman District Council);
- (n) Stephen Town (Tauranga City Council); and
- (o) Stuart Crosby (Tauranga City Council).