



13 November 2008

EN 100-05-05

MEMORANDUM

To: Mayor, Chairs, Chief Executives and Regulatory Managers of Local Government
Cc: RAC Water Sub-committee
From: *Local Government New Zealand*
Subject: The National Policy Statement for Freshwater Management NPS - Issues and Options paper -

Introduction and Background

The purpose of this memo is to provide a summary of the attached, "Issues and Options paper" and the process for the development of the Local Government New Zealand submission on the National Policy Statement for Freshwater Management (NPS).

We would encourage you to read the issues and options as it provides a level of analysis important to understanding of issues and potential solutions that is beyond the scope of this summary paper.

The purpose of the "Issues and Options" paper is to:

1. Outline the key freshwater issues that the LGNZ considers the Freshwater NPS should address;
2. Provide an analysis of how the Proposed Freshwater NPS currently addresses those issues;
3. Suggest options available to address those issues.
4. Ask the Local Government sector for feedback on the freshwater management issues in the paper (or other issues that Local Government wants the NPS to address), and the options for addressing those issues.

The next step will be to develop a submission and identify alternative wording for NPS provisions to give effect to the issues identified by the sector. The timeline for the development of the submission is set out in the table below:

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
11 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.

Summary of the “Issues and Options” paper

The paper is seeking sector feedback on two questions:

1. *Have we correctly identified the freshwater management issues? If not what other issues should, the NPS address.*
2. *Do you agree with the options to address those issues?*

DECISION MAKING ISSUES

Mandate an integrated approach to decision-making

Issue

The NPS should include an overarching objective or policy that requires all RMA decision making to take into account an integrated approach to decision-making. An integrated approach should provide a mandate for decision-makers to have regard to the following:

1. The interconnected nature of the freshwater resource, (e.g. freshwater systems that include both surface water and ground water and are made up of complex geomorphological systems from the upper catchments to the coast),
2. The interconnected nature of the decisions in relation to freshwater resources, land use and the impact on the sustainable development of communities

Option

The preferred option is a combination of the following

- Express recognition of interconnected nature of resource
- A high-level policy direction to adopt an integrated management approach to all levels of decision-making

The rationale for that option is that it will:

- a. Expressly recognise the nature of the resource.

- b. Ensure that that the interconnections between freshwater resources are considered 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

Considering the impacts of discharges (particularly non-point discharges in the context of permitted activities) or water takes in isolation, can lead to cumulative effects on water quality and quantity. While there are existing methods that can be utilised to address cumulative effects (e.g. minimum flows), these methods can be undermined by a lack of a mandate to address cumulative effects. This is a particular issues where there is uncertainty regarding environmental limits or the interrelationships between activities.

Option

The *proposed option* identified in the paper is:

- high level policy direction that identifies the requirement to manage cumulative effects and,
- High-level policy direction to avoid cumulative effects on freshwater resources.

Uncertainty of information

Issue

A difficult issue for RMA decision-makers is scientific uncertainty as to the effects of activities on freshwater resources. In some circumstances, the opportunity to resolve that uncertainty is limited by the ability to measure, model and understand the resource or the timeframes in which that information can be obtained.

Option

The preferred option is that:

- Freshwater NPS provides some guidance to local authorities when making decision in the face of uncertainty, by providing a mandate for the precautionary approach, while allowing decision-makers to apply an adaptive management approach where that is appropriate.

WATER ALLOCATION ISSUES

Setting priorities

Issue

Freshwater is a limited resource, subject to increasing demand and intense competition between various sectors of the community. Without policy guidance to the contrary, the general principle of "first come first served" applies generally to applications for water takes. Without national

guidance and/or mandate, this existing approach has the potential to put the availability of freshwater resources for municipal water supply at risk, and increase the litigation between other potential water uses (e.g. irrigation, power generation, recreation) where plans seek to define priorities.

Options

The preferred option is:

- That the Proposed Freshwater NPS adopts a definition and priority for municipal supply subject to appropriate water demand management, and direct / encourage regional authorities to determine priority for other users based upon the particular circumstances of each region.

Managing over allocation of water

Issue

Over allocation of water resources impacts on the ability of water users to access freshwater and may also affect both the values and water quality of water bodies. Although, a limited understanding of the resource may have lead to over allocation, once the issue is recognised there should be a mechanism to address over allocation, efficiently and in a timely manner.

Option

The preferred option is that:

- The Freshwater NPS to provide an overall objective to avoid over allocation and a mandate to address over allocation of freshwater resources, including reference to section 128 reviews

This provides strong guidance to address over allocation, but retains some flexibility for regional councils to address over allocation in consultation with its community

Transferability of water permits

Issue

Local Government New Zealand does not support privatisation of water rights however, cap and transfer schemes in some circumstances (e.g. to manage over allocation) provide a useful tool for addressing water use efficiency and allocation issues. We note that before introducing a transfer scheme, you must first ensure the existing allocation regime meets freshwater management outcomes identified by the community.

Option

A preferred option has not been identified, but two alternative options to address transferability are:

- Freshwater NPS requires regional councils to provide for transferability of water permits in regional plans (including separation of water take and use permits).
- Freshwater NPS encourages to regional councils to provide for cap and transfer schemes, including separating water take permits, and water use permits in planning instruments.

Efficiency of water use and Infrastructure development

Issue

We support the efficiency of water use as general principle. Development and investment in infrastructure can positively influence the efficiency of water use, allocation capacity and reliability. The NPS should actively encourage investment in infrastructure that addresses efficiency by including it as a relevant consideration considering priorities for allocation.

Option

The preferred option is:

- A high-level policy to consider infrastructure planning and development when considering freshwater management issues to provide a mandate but enable flexibility in the way that it is applied

WATER QUALITY ISSUES

Identification of key values

Issue

The identification of nationally important values in relation to freshwater resources could provide a useful tool to guide local authorities in their decision-making (and assist with the mandate). However key issues to consider are:

- Nationally and regionally, water bodies meet a diverse range of values e.g. municipal water supply, electricity generation, irrigation, recreation, or aesthetic or intrinsic values. An approach based on national environmental bottom lines, targets or standards would require a compromise between interests (in use of the resource) and values (that we are seeking to protect).
- Water bodies may have a range of values in addition to environmental values. Sustainable management of those resources requires a broader approach to improve water quality at a rate that will meet the needs of the community.
- Water bodies are at various levels of degradation (including some water bodies that are “naturally degraded”).

Option

The preferred option is to:

- Establish some national values and establish process and periods for identification of values of water bodies at regional level and periods for meeting targets.

This option is preferred on the basis that:

- Establishing “national values” will support local authorities to identify the values of freshwater resources, and develop appropriate processes and strategies to manage freshwater resources.
- The development of processes and strategies to manage freshwater resources should be undertaken at regional level and in consultation with the regional community.

- Provision (at a regional level) for setting periods for meeting targets will provide local authorities with the mandate to ensure that the quality of freshwater resources attains a level that reflects the identified national values.

Managing “at risk” catchments

Issue

There are particular challenges in managing catchments and water bodies where there are rapid changes in land use activities. Current planning processes under the RMA mean that it is difficult for Councils to respond quickly to these issues. An, “at risk” catchment is a catchments that will become degraded if existing circumstances and/or activities continue.

Option

The preferred option is that the:

- Freshwater NPS provides high level policy guidance to regional authorities to identify and manage at risk catchments

The preferred option 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 appropriate approach to managing at risk catchments is particular to each local authority.

TANGATA WHENUA ISSUES

Issue

- The Proposed Freshwater NPS seeks to ensure the involvement of both iwi and hapu so that Tangata Whenua values and interests are identified and reflected in the management of freshwater resources.

Key issues are:

- 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.
- Iwi / hapu can sometimes have limited capacity to engage meaningfully with local government.
- The use of the terms “iwi” and “hapu” is inconsistent with the RMA, which refers to “tangata whenua”.

Options

At this point, there is no preferred option but two options have been identified, they are:

- Accept the obligations as currently proposed, but note the resource problems with that approach and request funding for implementation from Central Government.
- Amend the current drafting to reflect an obligation to involve iwi or “tangata whenua”, but not hapu (that would not stop regions engaging with hapu, where the issues identified above are able to be resolved).

IMPLEMENTATION ISSUES

Time frames

Issue

The Proposed Freshwater NPS requires regional and district plans are notified within 40 days of an RPS (or change or variation to an RPS) that gives effect to the Freshwater NPS. The key issues are:

- Concentrating on process is likely to tie up resources preparing plan changes and variations rather than focusing on outcomes.
- There are significant costs involved in bringing forward plan changes to meet the periods set out in the Proposed Freshwater NPS with a consequent impact on human resources.
- If local authorities review their plans, to ensure they are giving effect to the NPS, and find they address NPS issues they should not have to be changed. The NPS should allow any future reviews to take place, as they are required.

Options

The preferred options are that:

- Freshwater NPS identifies key objectives and/or policies that can be deemed into regional policy statements (e.g. “environmental bottom lines”) and sets a realistic date for plans to be reviewed.
- Freshwater NPS provides for regional councils to set periods for reviewing regional and district plans in regional policy statements.

Monitoring and reporting

Issue

The proposed NPS appears to imply that “state of the environment” reporting is required. LGNZ seeks the views of the local government sector as to whether:

1. The monitoring and reporting requirements of the Proposed Freshwater NPS will be effective.
2. Regional councils should be required to undertake “State of the environment reporting”.

Definitions and terms

Issue

The Proposed Freshwater NPS proposes to introduce new terms not referred to in the RMA. There are practical implications applying those new terms, in addition to potential for litigation to determine the meaning of those terms.

Option

Remove those new terms and either replace with current RMA terms or define in the NPS

Other matters to consider

Some of these matters may not be able to be included in the NPS. Nevertheless, they are significant issues and it is intended to include them in the submission.

Relationship with other national documents

The integration and linkage between the Proposed Freshwater NPS, other proposed NPS and NES is critical. Government should consider a “policy” that sets out the interrelationships between those documents.

Funding of implementation

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.

Other matters

Local Government New Zealand would also like to address the following matters in the submission:

- Guidance as to when Central Government should/will make submissions on key projects.
- Guidance as to when Central Government should/will use the call-in process.
- What matters should trigger central government funding for clean up of water bodies, such as Lake Rotorua and Lake Taupo.
- In what circumstances will Central Government develop national environmental standards?
- What will trigger Central Government to make changes to the RMA?
- How local authorities can work with Central Government to adopt and promote a “whole of government approach”

Conclusion

Local Government New Zealand seeks your feedback on these issues and options. Please note that we need your feedback at the very latest by the 2nd of December, but as time constraints mean that we will be developing the submission in parallel, with the consultation period we ask that you provide feedback on the paper as soon as possible.

Please respond with your feedback to:

Phillip Eyles
Local Government New Zealand

Ph 04 9241213

Email: Phillip.Eyles@lgnz.co.nz