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MEMORANDUM

To: Mayors/Chairs, Chief Executives, Regulatory Managers
Cc: Irene Clarke, Manager Environment and Regulation, *Local Government New Zealand*
From: Phillip Eyles, Policy Analyst Environment and Regulation, *Local Government New Zealand*
Subject: **Sector Feedback: Issues and Options paper: Proposed National Policy Statement for Freshwater Management**

Purpose

The purpose of this memo is to provide a summary of sector feedback received by *Local Government New Zealand* on the “Issues and Options” paper¹ that was prepared for consultation with the local government sector on Freshwater Management and the National Policy Statement.

Introduction

Fifteen councils provided feedback on the Issues and Options paper. In general, councils endorsed the direction in the Issues and Options paper, although all made specific comments in relation to both the Issues and Options paper, and the Proposed National Policy Statement (PNPS) for Freshwater Management. A summary of the comments is set out below.

Comments on the PNPS for Freshwater Management

General comments

The PNPS fails to take into account urban waterways

Although the PNPS refers to **all** freshwater resources, it appears not encompass the diversity of freshwater resources, or take into account the different characteristics of urban rivers and streams that have been significantly modified in contrast to less modified rivers in rural areas. An alternative approach could be for the PNPS to require councils to adopt a test based on regional significance or requirement to take a “best practical option” when developing an appropriate management regime for individual rivers.

The PNPS introduction may create uncertainty

While some councils commented that the PNPS could assist with providing some certainty for freshwater management, one council noted that the introduction of the PNPS would create a period of uncertainty, particularly for holders of existing consents.

¹ The Issues and options paper was forwarded to the sector on the 18th November.

There are insufficient resources to give effect to the PNPS

A number of councils also questioned whether there would be sufficient national capacity and resources within the sector (including consultants) to give effect to a PNPS.

The Integration of freshwater management and land use

A number of councils commented that the PNPS should address the lack of integration of land use management and water management. However, there was a divergence of opinion regarding how that integration should be managed, with the two primary options either through regional or district plans, in preference to end of pipe discharge consents under s15 of RMA or through the consents process under regional plans.

The potential impact on economic development

One council raised concerns regarding the effect the PNPS may have on existing land-uses; future opportunities for the intensification of dairy farming; and potential economic impact of that for their district.

The potential for conflicting roles

A number of councils noted the potential of the PNPS to create uncertainty between the roles and responsibilities of regional councils and territorial authorities. One council noted the potential for conflicting consents under a joint regime would create problems for developers/businesses (urban or rural). There is also a concern that consent processes may become contingent on one another (between regional and territorial authorities), which will lengthen consent timeframes and frustrate businesses (rural and urban).

The costs of providing for the effects of climate change

One council noted that PNPS requirement to “provide for resilience against the biophysical effects of climate change”. The impact of this requirement could be over-engineering of water storage, with consequent financial implications for ratepayers.

In their view that investment is not clearly supported by the Ministry for the Environment’s (MfE’s) own position that potential effects of climate change are unclear. In addition, local authorities are already required to consider climate change in their long term planning, therefore including it in the PNPS without specific guidance adds little value.

Sharing information

One suggestion for issues that a PNPS or central government should address is a national information and sharing/education programme about the management of freshwater resources - focused on local communities to engage them and get them involved with their local environment.

PNPS Objectives

There was some support in principle for the objectives and policies of the PNPS but concerns raised regarding the implications of individual objectives and policies. Further detail on specific comments is included in the summary of feedback on the “Issues and Options” paper below.

Timeframes

A number of councils stated that the proposed timeframes in PNPS are both unrealistic and unachievable.

Costs

There is general agreement that PNPS will impose significant costs, and that the PNPS is an example of central government imposing costs on local government. A number of councils commented that central government should be making a direct contribution to costs or should fund the processes completely.

While the administrative costs of giving effect to the regulatory aspects of the PNPS were noted by most councils, one council also identified a number potential costs related to the provision of infrastructure, including the:

- upgrade of sewerage systems, particularly where discharge is into a surface waterway
- installation of sewerage schemes in some areas, where on-site water systems may be contributing to water degradation
- storm water treatment, in many instances this will involve installing a water treatment plant
- land purchases for disposal of discharge water (much of council's discharge is into rivers, and may need to change to discharge to land)
- measures to improve efficiency of water use
- additional water supply and storage infrastructure
- monitoring costs
- these costs may be exacerbated by the requirement to provide infrastructure that is resilient to climate change.



Comments on the Issues and Options paper

Decision-making	
Mandate an integrated approach	<p>There was general support for a more interconnected approach, particularly concerning management of the interaction between land use and freshwater resources. However, a number of councils noted the following key issues:</p> <ul style="list-style-type: none">• There must be no duplication of function between regional councils and territorial authorities, and the PNPS must provide a clear definition and/or confirmation of the statutory functions/roles of regional councils and territorial authorities as provided for under the RMA. One council noted that it may be preferable for district plans to provide for the management of urban storm water, rather than managing storm water at the end of pipes with discharge consents administered by the regional council, but that this approach required a clear definition of roles.• The receiving environment for freshwater systems is often the coastal environment e.g. Waitemata Harbour. So, integration with receiving environments in general is needed, not only freshwater environments.• An integrated approach highlights the overlaps between the Local Government Act (LGA) and the Resource Management Act (RMA), in particular the issue of when environmental targets are set, how are they to be funded?
Cumulative effects	<p>There was general support for <i>Local Government New Zealand's</i> preferred option (option 2) that the PNPS refer to the need to manage cumulative effects and provide high-level policy direction to avoid cumulative effects on freshwater resources. One council noted that the PNPS is an opportunity for clarity but has not captured that at present. One council added that the PNPS does not provide any clear direction to local authorities to refuse</p>

	resource consent applications where the potential cumulative effects of an activity might compromise the minimum water quality standards of a catchment.
Uncertainty of information	<p>Although there was general support for the precautionary approach, councils had a number of qualifications including:</p> <ul style="list-style-type: none"> • That it should only be used in the context of regionally significant freshwater resources rather than all freshwater resources, other wise it could act as an unnecessary restriction on to development. • It is important to clearly define how it will be implemented in the context of consent applications • Its use in NPS and subsequent application should be consistent with other such policy documents as the NZ Coastal Policy Statement (NZCPS) and the Fisheries Act. • It should not allow the consenting authority a mandate to not undertake robust and detail analysis in the support of decisions made, nor allow it to adopt a position of an application having to cause no negative effects on the Fresh Water resource.
<i>Other issues</i>	One council noted that the PNPS should confirm regional plans as the primary instrument for the management of freshwater resources, given their flexibility (e.g. plan changes to address emerging issues).
Water allocation	
Setting priorities	<p>Feedback on this issue was focused on two aspects:</p> <p><i>A priority for Municipal supply</i></p> <p>There was strong support for options that reduce risks to municipal water supplies and management, subject to appropriate demand management measures. One council noted that the concept of demand management needed to be broad enough to capture urban growth issues to ensure that development (and any increase in demand for municipal use) takes into account the potential impacts on water dependent activities such as horticulture.</p> <p>One Council (Hamilton City Council) proposed a potential definition for domestic and municipal supply:</p> <p><i>“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)”</i></p> <p><i>Priorities for allocation</i></p>

	<p>Although a number of councils noted difficulties with “first come first served”, there was general support for option 2. Option 2 would create a priority for municipal supply and encourage regional authorities to determine priority for other users. Specific comments in relation to option 2 were:</p> <ul style="list-style-type: none"> • A regionally determined prioritisation of water supply should take into account existing infrastructure, and meeting efficient use (good practice) criteria. • It must take a strategic view of the future development of the region as determined regionally. • Should enable consideration of the position of council’s municipal supply (which includes irrigation and industrial customers) in the context of the regional water requirements and not place the commercial need for water of some sectors of the economy above others. • Any options for priority must give adequate protection for the rights to water of users who fail to meet the criteria of either ‘domestic’ (PNPS proposal) or municipal (<i>Local Government New Zealand</i> proposal). <p>A suggested approach to give effect to Option 2, (based on Environment Waikato’s Regional Policy Variation (RPV6)) is to the setting and determination of a ranking system for the allocation of water resources. The suggestion is that the <i>Local Government New Zealand</i> submission needs to determine a suitable ranking system for the allocation of the Freshwater resource nationally. A suitable ranking system needs to ensure the following:</p> <ol style="list-style-type: none"> 1. The availability of water to meet the reasonably foreseeable domestic and municipal water supply requirements of individuals and communities and animal drinking water requirements. 2. Maintenance of the benefits derived from the generation of renewable energy. 3. Sufficient water to meet in-stream requirements during periods of water shortage or over allocation. 4. That decisions regarding the allocation and use of water take account of the contaminant assimilative capacity of water bodies.
Over allocation of water	<p>There was support for the PNPS providing a mandate to be able to claw back allocated resources, but one council noted that any “claw back” should take into account the allocation regime for that particular catchment, e.g. some catchments are managed solely as Water Supply Catchments and have been for a number of years, clawing back water from these types of catchments is seen as nonsensical and counter productive.</p>
Transferability	<p>There was no general support for encouraging regional councils to implement cap and transfer schemes.</p> <p>While some councils noted fundamental concerns regarding the potential for the privatisation of water or the concept of “auctioning” of water, others noted the potential environmental issues related to the transfer of water abstraction from site to another. Instead councils proposed that the <i>Local Government New Zealand</i> submission should:</p>

	<ul style="list-style-type: none"> • Advocate for a robust system to be established prior to initiating any enhanced mechanism for transferability, noting the Australian experience where previously allocated but unutilised allocations were traded resulting in increased adverse effects. • The NPS enables maximum flexibility for councils to provide for transferability of water permits, to address efficiency and allocation issues as councils see fit.
Efficiency of water use and infrastructure development	No specific comments
<i>Other allocation issues</i>	One council considered that the proposed NPS should address and provide some direction on the issue of resource rentals for the use of water resources, where appropriate (i.e. the ability for regional councils to directly charge for water use, as appropriate).
Water Quality	
Identification of key values	<p>There was general support for the Option 3, the establishment of national values, and process and periods for the identification of values for water bodies at regional level. Specific comments were:</p> <ul style="list-style-type: none"> • That there should be more guidance on what national notable values of freshwater resources are to help determine and frame local values • In relation to this issue, the PNPS should include a clear definition/confirmation of the statutory functions/roles of regional councils and territorial authorities as provided for under the RMA.
Managing “at risk” catchments	Councils supported the identification of “at risk” catchments as a priority, with one council noting that they are as important as managing degraded and outstanding freshwater resources.
Tangata Whenua	<p>There was general support for Option 3, to amend the wording in the PNPS to reflect an obligation to involve iwi or tangata whenua but not hapu. Specific comments from councils were:</p> <ul style="list-style-type: none"> • the PNPS should be consistent with the RMA, and should not be overly onerous on either/both of hapu and local authorities. • the introduction of new terms in relation to consultation and processes will undermine existing relationships. • the PNPS will create resource issues both for council and Maori.
Implementation	
Time frames	Although there was general agreement that timeframes proposed in the PNPS were unrealistic, one council

	<p>comments that rather than allow regional councils to set periods, the PNPS should include reasonable and realistic periods in accordance with hierarchy of plans.</p>
Monitoring and reporting	<p>In response to questions in the paper, two councils consider that monitoring and report requirements will be onerous to local authorities without any significant benefit, and that state of the environment reporting should be undertaken and lead by regional councils in accordance with the statutory functions provided by the RMA.</p>
Definitions and terms	<p>There was general agreement that there are issues with terminology throughout the PNPS, and the use of vague terms would increase the potential for litigation</p>
Other issues	<p>Other matters noted by councils were that:</p> <ul style="list-style-type: none"> • That the relationship of the PNPS with other national documents should be clarified. • It is crucial to emphasise the importance of the PNPS having alignment with other government legislation/standards. • That central government should make funding available for the implementation of the PNPS. • That the sector had limited resources to implement the PNPS. • The PNPS would require the upgrade of community infrastructure to meet new water quality standards impose additional costs on councils (and ratepayers). There should be some coordinated approach to this issue. • The community good provided for by the PNPS should not significantly impact on future economic development opportunities in the form of agriculture or other industries. • Central government should assist business, industry, and households in making informed choices when selecting products that enable everyday activities to contribute towards achieving the objectives of this PNPS. • Most freshwater discharges to coastal environments and the interaction of this PNPS with the NZCPS is a critical interface.