

Greater Wellington Regional Council: submission

To: Board of Inquiry

Submission on: Proposed National Policy Statement for Freshwater Management

1. Introductory comments

Thank you for the opportunity to comment on the *Proposed National Policy Statement for Freshwater Management* (the proposed NPS). Greater Wellington recognises the effort that has gone into the Freshwater Programme of Action to date, and we support recognition of the pressures facing New Zealand's freshwater resources.

Greater Wellington supports the development of national policy statements where they are able to provide clear, meaningful and useful guidance to local authorities on matters of national significance, and do not create significant additional costs. Overall, we consider that the ability of the proposed NPS to meet these tests can be improved by addressing the matters raised in Greater Wellington's submission.

Following a review of the operative Regional Policy Statement for the Wellington region, Greater Wellington will notify a proposed Regional Policy Statement in early 2009. It sets out policy direction for freshwater management in the region, and has been developed following a lot of consultation with city and district councils, iwi and the regional community. While a national policy statement should contain less specific provisions than a regional policy statement, it should support what regional councils are doing, and we invite you to look at the freshwater provisions in the Regional Policy Statement.

In general, we consider that the proposed Regional Policy Statement will give effect to provisions of the NPS. There is only one set of provisions in the proposed NPS that would require us to make significant changes to our proposed Regional Policy Statement. These are policies in the proposed NPS that use the terms "notable values", "outstanding freshwater resources" and "degraded freshwater resources" (policies 1(b), 2(a), 3(b)(i), 4(a) and 4(b)). These policies are not efficient or effective ways of achieving the objectives and Greater Wellington strongly opposes their inclusion. The terms are very poorly defined and will lead to large litigation costs that could be repeated from region to region because of the scope for each regional council to apply them differently. More efficient and effective approaches to meeting the NPS objectives in this region are contained in our proposed Regional Policy Statement, as described below under the headings *notable values*, *outstanding freshwater resources* and *degraded freshwater resources*.

Greater Wellington endorses the analysis in the *Issues and Options Paper* on the NPS prepared by Local Government New Zealand (LGNZ) and supports the submission by LGNZ. Our submission gives specific regional examples and targets the provisions in

the proposed NPS of greatest relevance to Greater Wellington's responsibilities for freshwater management. Some other matters not raised by LGNZ are also included in this submission.

2. Objectives

The goals and objectives of the proposed NPS generally align with what Greater Wellington is seeking through the provisions of its proposed Regional Policy Statement. However, there are no objectives that promote integrated management. Objective 2 mentions integrated management, but focuses on co-ordinating and sequencing of land-use development with investment in infrastructure for supply, storage and distribution of fresh water.

We think its important to have an objective that recognises the interconnected nature of fresh water and other resources, and the need for an intergrated management approach at all levels of decision making. Such an objective needs to be supported by policies that go beyond what the Resource Management Act says about integrating the management of natural and physical resources.

The proposed NPS targets regulation with six of the nine policies directing regional or district plans and resource consents. There is one policy on non-regulatory methods in plans, one on monitoring and one on review. There are no policies on the non-regulatory approaches that central government will take to contribute to meeting the objectives. There is a need to include a policy on how central government will help achieve the objectives through non-regulatory methods that it implements. For example, the circumstances under which transferable water permits will provide more equitable use of water without compromising the health of freshwater ecosystems or efficiency goals would benefit from further investigation.

Relief

Include an objective and policy(ies) that recognise the interconnections of fresh water with land resources and provides direction for the adoption of an holistic and integrated approach to decision making that goes beyond what is already stated in the Act.

Include a policy/(ies) setting out the non-regulatory approaches that central government will take to help achieve the objectives of the NPS.

3. Cumulative effects

The proposed NPS does not give any direction on managing the cumulative effects of discharges (point source and non-point source) and water takes on water bodies. In the Wellington region, poor water quality and reduced flows in rivers and water levels in groundwater aquifers are the result of many individual discharges and water takes. Most of these discharges or takes, by themselves, have no significant adverse effects and many have minor adverse effects. It is the cumulative effects that result in degradation of water bodies.

The requirement in the proposed NPS to set water quality standards and environmental flows and levels might help address cumulative effects of activities in a catchment (policy 1(c)). However, this policy is about receiving waters, not the activities that cause adverse effects. Policies from central government to manage the cumulative effects of activities would complement the policies on receiving water standards. Such direction would assist regional council promotion of a whole of catchment approach when addressing individual activities.

Relief sought

Include a policy(ies) that requires management of the cumulative adverse effects of activities and gives policy direction on how significant cumulative adverse effects on freshwater resources are to be avoided.

4. Uncertain information

There is often scientific uncertainty about the effects of activities on freshwater resources. In addition, the natural state of these resources constantly fluctuate (water quality, river flows, groundwater levels and groundwater/surface water interactions) and, without sufficient information, there can be uncertainty about the way resources behave.

The proposed NPS contains no guidance on how decisions should be made when there is insufficient information on the resource or how it will be affected by an activity. The New Zealand Coastal Policy Statement 1994 includes a precautionary policy and the Environment Court has established the need for caution when there is insufficient information. It would be helpful for the NPS to provide guidance to how decision makers should respond in face of scientific uncertainty.

Relief sought

Include a policy(ies) that provides a mandate for local authorities to apply a precautionary approach and gives direction on how to exercise caution in the face of scientific uncertainty.

5. Managing over- allocation

Some groundwater resources in the Greater Wellington region are over-allocated. Investigations are now underway to establish allocation limits and minimum water levels for these resources. There is a degree of uncertainty about the ability to “claw back” water if current allocation limits are shown to be unsustainable. The NPS is an opportunity to clarify and provide support for “claw back” of water in appropriate circumstances.

Relief sought

Include policy(ies) that provides direction on how currently over-allocated freshwater resources are to be addressed.

6. Notable values

The proposed NPS includes a policy (1(b)) requiring regional councils to identify “notable” values of outstanding freshwater resources and degraded freshwater resources. Other policies require provisions to be included in regional plans that manage these notable freshwater resources. The term “notable” is not one that is normally used in a Resource Management Act context and the definition provided is vague. Implementation of these policies will invite litigation each time regional councils implement them because of the scope for different interpretation from region to region.

As an alternative, we support an approach that identifies the purposes that water bodies are to be managed for. In practice, such an approach would apply all the information that local authorities have about the values and uses of any particular water body. It is also consistent with the approach indicated in the Third Schedule of the Act for managing water bodies. The approach we have taken in our proposed Regional Policy Statement is for regional plans to identify the purposes for managing water bodies and to establish appropriate standards for water quality, and flows and water levels consistent with the management purposes. Such an approach is also consistent with policy (1 (c)). It also provides for all water bodies, not just ones with notable values.

Relief

Delete reference in the NPS to “notable values” of freshwater resources and substitute with a policy that requires water bodies to be managed for identified purposes.

7. Outstanding freshwater resources

The proposed NPS requires regional policy statements to identify “outstanding freshwater resources” in policy 1(b). Other policies require provisions to manage “outstanding freshwater resources” to be included in regional plans. The term “outstanding” is used in the Act in the context of water conservation orders. There is a significant amount of case law about outstanding water bodies that may be in conflict with the definition of outstanding freshwater resources in the proposed NPS and the intention of the relevant policies. Implementation of these policies will invite litigation each time regional councils implement them because of the scope for different interpretations from region to region.

The NPS provides an opportunity for central government to identify nationally significant water bodies, and provide direction and guidance on how they should be managed. Central government has been working on a “water bodies of national importance” process for some years now and has already sought comments on draft lists of significant water bodies. The results of this exercise should be referred to in the NPS as we believe it is inappropriate for regional councils to be responsible for identifying what is nationally significant. Alternatively, if central government is unable to identify “outstanding freshwater resources”, then criteria should be included in the NPS by which regional councils can decide which freshwater resources are significant.

At the regional level, an appropriate approach is for regionally significant water bodies to be identified and protection provided in regional and district plans for the values that make them significant. The identification of regionally significant values is the approach Greater Wellington has taken in its proposed Regional Policy Statement.

Relief

Delete the reference in the NPS to “outstanding freshwater resources” and include a schedule of nationally significant water bodies and policy guidance on how they are to be managed. Alternatively, include criteria in the NPS by which regional councils are able to identify significant water bodies.

8. Degraded freshwater resources

The proposed NPS requires regional policy statements to identify “degraded freshwater resources” in policy 1(b). Other policies require provisions to manage “degraded freshwater resources” to be included in regional plans. The definition of degraded is vague and will result in significant litigation when regional councils attempt to apply it. We used a similar approach in our Regional Policy Statement and Regional Freshwater Plan, which were both made operative a decade ago. These planning documents identified degraded water bodies that did not meet specific water quality criteria, and sought their enhancement. Ten years after these planning documents were made operative, we reported in *Measuring up the state of the environment report 2005* that improvement had occurred in only two of 14 water bodies identified. However, the water quality of a greater number of water bodies declined in that period.

Greater Wellington considers that a more effective alternative to identifying “degraded” water bodies is to establish water quality and flow and water level standards, and make sure that these are met.

Relief

Delete the reference in the NPS to “degraded freshwater resources” and apply the standards referred to in policy 1 (c).

9. Implementation

The proposed NPS requires regional and district plans to be notified within 40 days of a Regional Policy Statement being made operative that gives effect to the NPS. This timeframe is not reasonable or realistic. It is not possible to prepare plan change provisions in 40 days that includes adequate consultation with people and communities.

Relief

Make changes to the time frames so that effect is given to NPS provisions at the time of the next review of regional or district plans.

10. Monitoring and reporting

Policies 2(c)(iv) and 3(c) appear to require local authorities to include rules that require effective monitoring and reporting on resource consents. However, it is unclear what these policies are trying to achieve through rules in regional and district plans that cannot be achieved through current practices. It is doubtful whether monitoring and reporting on resource consents can be the subject matter for rules. Regional plans can include information to be included with an application for a resource consent. Monitoring and reporting on consent conditions is a matter that is appropriately addressed in resource consent conditions.

Relief

Delete policies 2(c)(iv) and 3(c).

11. Definition of Freshwater Resources

The definition of freshwater resources excludes ephemeral streams. Greater Wellington has identified the state of urban streams as one of the three most important freshwater issues requiring improvement in the region (*Measuring up: the state of the environment report for the Wellington region 2005*). The two main causes of degradation of urban streams are stormwater discharges and piping streams. Greater Wellington is working with city and district councils to address both of these issues and the proposed Regional Policy Statement contains policies that direct regional and district plans on both issues. Many of the streams affected are ephemeral streams. The reclamation, piping, straightening or concrete lining of streams, including ephemeral urban streams, are discouraged. The exclusion of ephemeral streams from the NPS devalues the importance of a regionally significant freshwater issue in the Wellington region and could affect the rate of progress we are making in addressing this issue with city and regional councils.

Relief

Replace the term “freshwater resources”, where it is used in the proposed NPS, with the term “water bodies”.

12. Involvement in hearing

Greater Wellington Regional Council wishes to be heard in support of its submission.

If others make a similar submission, Greater Wellington would consider presenting a joint case with them at a hearing.

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