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Implications of the National Policy Statement on Freshwater Management



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Prepared for
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Summary

On 11 May 2011, the Government released the National Policy Statement for Freshwater Management 2011 (NPS), making several changes to the recommendations received from a Board of Inquiry in January 2010.

The objectives of the NPS refer to safeguarding the capacity and processes of freshwater systems generally. Rather than requiring these to be protected for every freshwater body, as **the Board of Inquiry's version would have done**, the NPS is one of maintaining or improving *the overall quality of freshwater within a region*¹. As the Cabinet paper for the NPS states, this means that some rivers and lakes can be further degraded as long as the regional council has plans for others to be improved. Experience both within New Zealand and overseas suggests that an “offsetting” approach is likely to lead to further degradation.

As is currently the case, each regional council will determine what standard is appropriate for each lake, river, aquifer and wetland within its region. If a council decides that a given resource (including water quality) is “over-allocated”, this must be addressed but otherwise a council can continue current policy.

The Board of Inquiry recommended that, until a council has policies to protect water quality from further decline, any new discharge or increase in land use intensity (with associated diffuse pollution) would require a resource consent. Enforcement of such a provision would have done much to arrest the decline in freshwater bodies. However, the Government, having had advice that questioned the legality of this provision, replaced it with a provision that only applies to activities that already require a resource consent. This policy will thus have no effect on the main source of the problem unless councils change their plans to require consents for diffuse pollution, and there is no imperative in the NPS for them to do so.

If councils were to act promptly to set clear limits and standards for at least the most at-risk freshwater bodies and implement robust methods to achieve these, including addressing over-allocation, there is a possibility that the decline in the condition of New Zealand's freshwater systems can be arrested. However, experience suggests this is likely to take at least three to five years, and councils are allowed to take until 2030.

The future health of New Zealand's freshwater ecosystems also depends upon regional councils setting rigorous standards and then implementing effective restraints on pollution from intensive land use. This is something councils have thus far done only with large amounts of financial assistance from central government.

The lack of national standards that apply to all water bodies and the likely long period for implementation, combined with new subsidies for irrigation schemes that are likely to result in further intensification of land use, suggest that despite the NPS the condition of New Zealand's lakes, rivers and wetlands is likely to continue to decline for several more years and possibly much longer.

¹ Italics indicate words or phrases that are directly quoted from the NPS.

1. BACKGROUND

The previous Labour-led Government released a proposed National Policy Statement (NPS) on Freshwater Management prior to the 2008 election. It appointed a Board of Inquiry to hear and consider submissions and then recommend whether it should be approved and, if so, what improvements were needed for it to achieve its objectives.

The Board was chaired by retired Environment Court judge David Sheppard and included Jon Harding (a water quality scientist), Jenni Vernon (a dairy farmer and former chair of Waikato Regional Council), and Kevin Prime (a resource management commissioner, farmer, forester and bee keeper with tribal affiliation to Ngatihine, Northland). The Board received submissions and held hearings around New Zealand during 2009.

The Board submitted its recommendations to the Government in January 2010, and the Government subsequently asked the Land and Water Forum to advise how it should proceed.

In September 2010, the Land and Water Forum recommended that the Government adopt an NPS based on the draft recommended by the Board of Inquiry, with some changes. Its report said:

The government should:

- promulgate a National Policy Statement for freshwater quickly. The current draft as recommended by the Board of Inquiry is a basis to work from.
- consider changes in the following areas of the current draft –
 - the references to Tangata Whenua roles and Māori values and interests
 - drafting changes to policy C1 to include reference to "mitigate" in achieving prescribed standards
 - policy E2 to clarify what contamination means in relation to the objectives
 - drafting changes to the transitional measures to correct a perceived vires problem.²

On 11 May 2011, the Government released the National Policy Statement for Freshwater Management 2011, making several changes to the recommendations received from the Board of Inquiry in January 2010.

Fish and Game New Zealand has asked Cawthron Institute to comment on the implications of the NPS, with reference to the recommendations of the Board of Inquiry and the Land and Water Forum.

² Land and Water Forum, 2010, Report of the Land and Water Forum: A Fresh Start for Freshwater, p.5.

2. MAIN PROVISIONS OF THE NPS

2.1. Preamble

As stated in its Preamble, the NPS aims to *direct local government to manage water in an integrated and sustainable way, while providing for economic growth within set water quantity and quality limits*. The NPS frames both water quality and quantity issues in terms of allocation, with the Preamble stating that *setting enforceable quality and quantity limits is a key purpose* of the NPS.

2.2. Objectives

The water quality objectives in the NPS are *To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater* (Objective A1) and *The overall quality of freshwater within a region is maintained or improved while protecting outstanding water bodies and the significant values of wetlands, and improving the quality of water bodies that have been degraded by human activities to the point of being over-allocated* (Objective A2).

2.3. Policies

2.3.1. Setting limits, flows and levels

To achieve these general objectives, councils are directed to change their regional plans to set water quality limits (Policy A1) and environmental flows and levels (Policy B1) for all freshwater bodies in the region, and establish rules to avoid over-allocation. Where water bodies do not meet the NPS objectives, councils are directed to specify targets and implement methods to meet those targets within a defined timeframe. On the other hand, as long as councils consider they can meet the NPS's general objectives, the NPS does not require them to improve the condition of any particular water body.

2.3.2. Best practicable option

Councils are also directed to impose conditions on discharge permits to ensure the water quality limits and targets are met and, *where permissible, to make rules requiring the adoption of the best practicable option*³ (BPO) *to prevent or minimise any adverse effect of any discharge* (Policy A3). Policy A4 states in passing that the term discharge includes any diffuse

³ The Resource Management Act 1991, s.2, provides this definition:

“best practicable option, in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—
(a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and
(b) the financial implications, and the effects on the environment, of that option when compared with other options; and
(c) the current state of technical knowledge and the likelihood that the option can be successfully applied.”

discharge by any animal. Policy A3 could thus be interpreted as directing councils to require adoption of BPOs for diffuse discharges from livestock, except where such a requirement is not permitted.

If BPOs are required and are defined rigorously, this could help to stop the decline in freshwater quality, although such an interpretation would almost certainly meet strong opposition. The Resource Management Act says that councils must, before requiring BPOs, consider a number of factors, including financial implications and whether a BPO is the most efficient and effective means of addressing the problem. The significance of the new BPO requirement is therefore difficult to predict, and in any case it will take time for any such requirements to be incorporated into regional plans, tested through appeals and then implemented by land users.

When dealing with water quantity (environmental flows and levels), councils are also directed to provide for efficient allocation of water (Policy B2), state criteria for transfers of water take permits (Policy B3), and to encourage efficient use of water (Policy B4). While these policies could have some implications for water use and hence both flows and quality, the effects are likely to be mixed and probably minor overall.

2.3.3. Timeframe for implementation

Policy E1 says regional councils are to implement the NPS *as promptly as is reasonably possible in the circumstances* so that it is *fully completed* by no later than 31 December 2030. Councils may do this by a formally adopted programme of time-limited stages.

2.3.4. Summary of main provisions

In summary, the NPS directs councils to establish water quality limits, flows and levels consistent with the NPS objective of safeguarding the life-supporting capacity, ecosystem processes and indigenous freshwater species, and **maintaining or improving each region's** overall water quality. The policies within the NPS further direct councils to provide for allocation of resources up to these limits, encourage efficient use of water including through transferability of water permits, address over-allocation where it exists, and ensure there is no further over-allocation. Where water quality does not meet objectives set by a regional council, that council must set targets and implement methods to meet those targets within a defined timeframe, including, where permissible, requiring the adoption of the best practicable option to controls discharges.

The NPS thus provides a framework for councils to address the issues of freshwater management and provides direction on the objectives they must meet and the types of policies they must implement to achieve them. Each of the 16 regional councils⁴ must now undertake a process to interpret these objectives, including what it means to safeguard life-supporting

⁴ If one includes the Chatham Islands, there are 17 local authorities with regional council functions.

capacity, ecosystem processes and indigenous species at a regional level. They have nearly 20 years to do so.

2.4. Possible additional guidance

The Government has stated that the NPS is a “first step” to improve freshwater management at a national level. Cabinet papers signal that the forward work programme includes:

- **Tranche 2: A broad programme of work on setting limits on water quality and quantity, including governance arrangements, aimed at delivering policy options to Cabinet by [withheld] 2012.**
- **Tranche 3: Work on managing to limits, including more efficient allocation mechanisms and additional tools to manage the effects of land use, to be delivered by [withheld].⁵**

Tranche 2 could involve a national environmental standard on the process by which environmental limits should be set, with councils then left to decide on the actual limits. It is not possible to know in advance how any such guidance will influence water quality and quantity decisions by regional councils, but some councils may choose to wait for this guidance. This could mean a further delay in councils starting work on setting limits, but could also reduce the costs of 16 councils each developing their own approach. Alternatively, some councils may choose not to wait, but rather to start now and plan to align their process with new guidance when it becomes available.

Further implications of the NPS are seen by comparing it with the recommendations of the Board of Inquiry, taking in account the report of the Land and Water Forum. This is done in the following section.

3. KEY CHANGES TO BOARD OF INQUIRY VERSION

There are a number of noteworthy differences between the Board’s recommendations and the NPS adopted by the Government.

3.1. Preamble and objectives

The Preamble to the NPS provides a clearer statement of policy intent than that recommended by the Board of Inquiry (BOI), but a Preamble has effect only where underpinned by substantive provisions of the NPS itself.

⁵ Cabinet paper, Fresh Start for Freshwater – forward work programme, p.2, paragraph 6.

The NPS deletes the overarching General Objective recommended by the Board, which was to maintain, and where practicable restore and enhance, the natural and in-stream values of freshwater systems. The Cabinet paper on the NPS says this objective “gave precedence to environmental values” and has been deleted to “provide a better balance of all values”.⁶

The BOI recommended an objective (E1) to *protect* outstanding water bodies, *enhance* those contaminated by human activities, and *maintain* all other water bodies. This is effectively an objective of no further decline for any water body. The water quality objective in the Government’s NPS is to *improve or maintain* the *overall quality of freshwater within a region*. As the Cabinet paper acknowledges, this means that some rivers and lakes can be further degraded as long as the regional council has plans for others to be improved:

The objective also recognises that a bottom line of at least maintaining water quality everywhere is not possible. It allows for some variability in terms of water quality as long as the overall water quality is maintained in a region. Essentially it allows for offsets within a region, including between catchments.⁷

A policy of “net improvement in water quality” has been in place in the Waikato since 1993. The Waikato Regional Council identified at that time that water quality in some rivers was declining, and that the dominant cause was diffuse pollution from agriculture (Environment Waikato 2000). The council responded with policies that encouraged farmers to voluntarily adopt practices to reduce their runoff to streams, rivers and lakes. Some farmers did adopt such practices and have reduced the loss of sediment and nutrients from their land, but many more intensified their farms. They added fertiliser, took more water from rivers for irrigation, increased stocking rates and in some cases cleared forests to create new farms, and inevitably increased diffuse pollution.

The result was that water quality across most of the Waikato region continued to decline. Over \$80 million of central and local government funds was committed to pay farmers to reduce nitrogen discharges to Lake Taupo. Water quality in the upper Waikato continues to get worse and now threatens Karapiro and other hydro lakes, so the Government has committed \$210 million over 30 years to help clean up the Waikato River, though there are as yet no plans for how this will be done. In the Bay of Plenty region, the Rotorua Lakes Protection and Restoration Fund will cost central and local government \$144 million, and implementation measures are still being developed.

Whereas the Board of Inquiry recommended a minimum standard for all water bodies, the NPS maintains the current situation in which regional councils have responsibility for setting standards for water bodies within their regions.

⁶ Cabinet paper, National Policy Statement for Freshwater Management, p.11, paragraph 64.b. Released 11 May 2010 and available at <http://www.mfe.govt.nz/rma/central/nps/freshwater-management.html>

⁷ Cabinet paper, National Policy Statement for Freshwater Management, p.6, paragraph 33.

3.2. Policies

3.2.1. *Avoid, remedy and mitigate*

The Land and Water Forum recommended the inclusion of the word *mitigate* in the Board's Policy C1 regarding cumulative effects. This has been done; *remedy* has also been inserted. The wording changes are minor and probably not of consequence as long as the remedies and mitigation are rigorously assessed.

3.2.2. *Maori values and interests*

The Land and Water Forum also recommended the NPS should make changes to the Board's recommended policies regarding tangata whenua roles and Maori values and interests, but did not specify the nature or purpose of such changes. The Board's recommended policy (B1) would have required every council to ensure that it had policies for identifying Maori values and interests in all freshwater and for involving tangata whenua in decision making regarding freshwater.

The NPS policy (D1) says regional councils *shall take all reasonable steps* to involve iwi and hapu in freshwater management, to work with iwi and hapu to identify freshwater values and interests, and to reflect tangata whenua values and interests in freshwater decision-making and management. While the two provisions are largely equivalent, it would appear the NPS has lessened the imperative on councils to involve tangata whenua in decision making.

3.2.3. *Further degradation*

The Board recommended a policy (E2) that every regional council avoid decisions or actions that would result in further contamination of freshwater. The Land and Water Forum recommended that the meaning of contamination in this context be clarified. The NPS has deleted the policy entirely, which is consistent with its objective of overall improvement noted above, *i.e.* some further contamination may be allowed as long as this is offset by improvement elsewhere in the region.

Given the experience in the Waikato region and overseas, where offsetting has also been criticised for failing to protect biodiversity values (Burgin 2009), guidance will be needed on how offsets are to be defined and assessed if overall net decline is to be avoided. This will be a challenging task given that water quality is assessed using a variety of indicators and future condition can be difficult to predict. A recent review of offsetting approaches found that "Typically, development proceeds while offsets fall short of goals or are never implemented" (Walker *et al.* 2009). Failure is generally attributed to inadequate assessment currencies, disregard for exchange restrictions, and poor enforcement (*ibid.*).

The Board of Inquiry recommended (Policy E4) that, until a council has established policies to protect water quality, any new discharge or increase in land use intensity would require a

resource consent application to consider the adverse effects and whether they could be avoided.

The NPS has a similar provision (Policy A4), which acknowledges that a diffuse discharge by an animal is a “discharge” under s.15 of the Resource Management Act. However, Policy A4 only applies to activities that already require a resource consent, and most councils do not require a resource consent for diffuse discharges resulting from animal farming. The only regional rules that require a consent for diffuse pollution from livestock are already more stringent than Policy A4 requires⁸, so this policy will have no effect on the main source of the problem unless and until councils change their regional plans to require consents for diffuse discharges from livestock. With regard to other activities that do require consent, the NPS directs councils to “have regard to” adverse effects. Councils are already required to take into account adverse effects.

The Board of Inquiry’s recommended policy would have created a strong incentive for councils to act quickly by requiring resource consent for all land use intensification, until such time as standards and policies have been established. The NPS removes this imperative and gives councils until 2030 to get plans in place to address the effects of diffuse discharges.

The Cabinet paper says the Board’s recommended Policy E4 was considered to be *ultra vires*.⁹ Judge Sheppard has said publicly that he carefully considered this issue when the Board wrote its report, and is confident that its recommendations are within the scope of what a national policy statement can do.¹⁰ The Land and Water Forum said that there was a “perceived *vires* problem” with the Board’s version and recommended unspecified drafting changes to address this.

It is not for this analysis to suggest which interpretation is legally correct or whether the perceived *vires* problem could have been addressed in another way. What can be said is that the NPS has removed the transitional protection against further degradation and the strong imperative on councils to act quickly, and has not replaced it with a similar protection or imperative.

3.2.4. Sustaining flows and levels

The Board recommended that regional council plans be required to establish policies and rules that “enable environmental flows and levels to be fully sustained”, and linked this to the list of in-stream values in the General Objective that has been deleted in the NPS. The NPS (Policy B1) requires plans to set flows and levels in order to “give effect to the objectives of the NPS”.

⁸ Bay of Plenty Regional Council has rules for some Rotorua Lakes catchments that make pastoral farming at current levels of intensity a permitted activity, and any increased intensity is a restricted discretionary activity requiring resource consent, with conditions that require any increase to be fully offset. Environment Waikato has rules for Lake Taupo that are constructed differently but have a similar effect.

⁹ Cabinet paper, National Policy Statement for Freshwater Management, p.11, paragraph 64.d.

¹⁰ Judge Sheppard made this remark in response to a question after his address to the Resource Management Law Association conference held in Christchurch in October 2010 (pers. obs. by author).

These include *safeguarding the life-supporting capacity, ecosystem processes and indigenous species ... of freshwater*. The NPS makes no mention of trout and salmon.

4. CONCLUSION

Whereas the Board recommended a transitional measure to protect against further degradation (Policy E4 discussed above), the effectiveness of the NPS depends critically on how, and how quickly, regional councils and stakeholders respond. If councils can promptly establish plan provisions that set clear limits and standards for at least the most at-risk freshwater bodies and implement robust methods to achieve these, including addressing over-allocation, there is a possibility that the decline can be arrested.

Experience suggests that contentious plan changes take three to five years to develop, propose and finalise, and possibly more if there are multiple appeals. Under the NPS, councils have until 2030 to implement the necessary policies and methods. Intensification is likely to continue in the meantime, and water quality to worsen given that diffuse runoff does not require consent.

The future depends not only on when regional councils complete the plan change and implementation process, but also whether they set rigorous standards and then implement effective restraints on pollution from intensive land use. That is something that councils have to date done only with large amounts of financial assistance from central government.

The lack of national standards that apply to all water bodies and the likely long period for implementation, combined with new subsidies for irrigation schemes that are likely to result in further intensification of land use, suggest that **despite the NPS the condition of New Zealand's lakes, rivers and wetlands is likely to continue to decline for several more years and possibly much longer.**

The Appendix to this report is a copy of the NPS with comments highlighting key differences with the version recommended by the Board of Inquiry.

5. REFERENCES

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National Policy Statement for Freshwater Management 2011

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Preamble

Comment [jas1]: This Preamble is arguably better than that in the version recommended by the Board of Inquiry (BOI), but it has effect only where underpinned by substantive provisions of the NPS itself.

Fresh water is essential to New Zealand's economic, environmental, cultural and social well-being. Fresh water gives our primary production, tourism, and energy generation sectors their competitive advantage in the global economy. Fresh water is highly valued for its recreational aspects and it underpins important parts of New Zealand's biodiversity and natural heritage. Fresh water has deep cultural meaning to all New Zealanders. Many of New Zealand's lakes, rivers and wetlands are iconic and well known globally for their natural beauty and intrinsic values.

The Treaty of Waitangi (Te Tiriti o Waitangi) is the underlying foundation of the Crown–iwi/hapū relationship with regard to freshwater resources. Addressing tāngata whenua values and interests across all of the well-beings, and including the involvement of iwi and hapū in the overall management of fresh water, are key to meeting obligations under the Treaty of Waitangi.

All New Zealanders have a common interest in ensuring the country's freshwater lakes, rivers, aquifers and wetlands are managed wisely.

New Zealand faces challenges in managing our fresh water to provide for all of the values that are important to New Zealanders. The quality, health, availability and economic value of our fresh waters are under threat. These challenges are likely to increase over time due to the impacts of climate change.

To respond effectively to these challenges and issues we need to have a good understanding of our freshwater resources, the threats to them and provide a management framework that enables water to contribute both to New Zealand's economic growth and environmental integrity and provides for the values that are important to New Zealanders.

This national policy statement sets out objectives and policies that direct local government to manage water in an integrated and sustainable way, while providing for economic growth within set water quantity and quality limits. The national policy statement is a first step to improve freshwater management at a national level.

Setting enforceable quality and quantity limits is a key purpose of this national policy statement. This is a fundamental step to achieving environmental outcomes and creating the necessary incentives to use fresh water efficiently, while providing certainty for investment. Water quality and quantity limits must reflect local and national values. The process for setting limits should be informed by the best available information and scientific and socio-economic knowledge.

Once limits are set, freshwater resources need to be allocated to users, while providing the ability to transfer entitlements between users so that we maximise the value we get from water. Where water resources are over-allocated (in terms of quality and quantity) to the point that national and local values are not met, we also need to ensure that over-allocation is reduced over agreed timeframes.

Given the vital importance of freshwater resources to New Zealand and New Zealanders, and in order to achieve the purpose of the Resource Management Act 1991 (the Act), the Crown recognises there is a particular need for clear central government policy to set a national direction, though the management of the resource needs to reflect the catchment-level variation between water bodies and different demands on the resource across regions. This includes managing land use and development activities that affect water so that growth is achieved with a lower environmental footprint.

The New Zealand Coastal Policy Statement 2010 addresses issues with water quality in the coastal environment. The management of coastal water and fresh water requires an integrated and consistent approach.

National values of fresh water

Water is valued for the following uses:

- domestic drinking and washing water
- animal drinking water
- community water supply
- fire fighting
- electricity generation
- commercial and industrial processes
- irrigation
- recreational activities (including waka ama)
- food production and harvesting eg, fish farms and mahinga kai
- transport and access (including tauranga waka)
- cleaning, dilution and disposal of waste.

Comment [Jas2]: These are largely carried through from the BOI's recommended Preamble.

There are also values that relate to recognising and respecting fresh water's intrinsic values for: safeguarding the life-supporting capacity of water and associated ecosystems; and sustaining its potential to meet the reasonably foreseeable needs of future generations. Examples of these values include:

- the interdependency of the elements of the freshwater cycle
- the natural form, character, functioning and natural processes of water bodies and margins, including natural flows, velocities, levels, variability and connections
- the natural conditions of fresh water, free from biological or chemical alterations resulting from human activity, so that it is fit for all aspects of its intrinsic values
- healthy ecosystem processes functioning naturally
- healthy ecosystems supporting the diversity of indigenous species in sustainable populations
- cultural and traditional relationships of Māori with fresh water
- historic heritage associations with fresh water
- providing a sense of place for people and communities.

Comment [Jas3]: BOI recommended (*emphasis added*): "cultural and traditional relationships of Māori with fresh water, including mauri, wāhi tapu, wāi taonga, recognised customary activities and spiritual values"

All the values in both lists are important national values of fresh water.

Review

The Minister for the Environment intends to seek an independent review of the implementation and effectiveness of this national policy statement in achieving all its objectives and policies and in achieving the purpose of the Act, no later than five years after it comes into force. The Minister shall then consider the need to review, change or revoke this national policy statement. Collection of monitoring data to inform this review will begin at least two years prior to the review.

This preamble may assist the interpretation of the national policy statement.

Title

This national policy statement is the National Policy Statement for Freshwater Management 2011.

Commencement

This national policy statement will take effect on 1 July 2011.

Interpretation

In this national policy statement:

“Efficient allocation” includes economic, technical and dynamic efficiency.

“Environmental flows and/or levels” are a type of limit which describes the amount of water in a body of fresh water (except ponds and naturally ephemeral water bodies) which is required to meet freshwater objectives. Environmental flows for rivers and streams must include an allocation limit and a minimum flow (or other flow/s). Environmental levels for other bodies of fresh water must include an allocation limit and a minimum water level (or other level/s).

“Freshwater objective” describes the intended environmental outcome(s).

“Limit” is the maximum amount of resource use available, which allows a freshwater objective to be met.

“Over-allocation” is the situation where the resource:

- a) has been allocated to users beyond a limit or
- b) is being used to a point where a freshwater objective is no longer being met.

This applies to both water quantity and quality.

“Outstanding freshwater bodies” are those water bodies with outstanding values, including ecological, landscape, recreational and spiritual values.

“Target” is a limit which must be met at a defined time in the future. This meaning only applies in the context of over-allocation.

Terms given meaning in the Act have the meanings so given.

A. Water quality

Objective A1

To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the use and development of land, and of discharges of contaminants.

Objective A2

The overall quality of fresh water within a region is maintained or improved while:

- a. protecting the quality of outstanding freshwater bodies
- b. protecting the significant values of wetlands and
- c. improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

Policy A1

By every regional council making or changing regional plans to the extent needed to ensure the plans:

- a. establish freshwater objectives and set freshwater quality limits for all bodies of fresh water in their regions to give effect to the objectives in this national policy statement, having regard to at least the following:
 - i. the reasonably foreseeable impacts of climate change
 - ii. the connection between water bodies
- b. establish methods (including rules) to avoid over-allocation.

Policy A2

Where water bodies do not meet the freshwater objectives made pursuant to Policy A1, every regional council is to specify targets and implement methods (either or both regulatory and non-regulatory) to assist the improvement of water quality in the water bodies, to meet those targets, and within a defined timeframe.

Policy A3

By regional councils:

- a. imposing conditions on discharge permits to ensure the limits and targets specified pursuant to Policy A1 and Policy A2 can be met and
- b. where permissible, making rules requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant into fresh water, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering fresh water.

Comment [Jas4]:

The BOI version had the following general objective, which the Cabinet paper (p.11) says gave precedence to environmental values and has been deleted to "provide a better balance of all values".

A. General objective Objective A1

To manage fresh water in a way and at a rate that –

1) maintains, and to the extent practicable, restores and enhances the intrinsic values of fresh water:

a) in the interdependence of the elements of the freshwater cycle; and

b) in the natural form, character, functioning and natural processes of water bodies; and

c) in natural and healthy conditions free from alterations resulting from human activity; and

d) in healthy ecosystem processes functioning naturally; and

e) for safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

f) for providing healthy ecosystems supporting the diversity of indigenous species in sustainable populations; and

g) for sustaining cultural and traditional relationships of Māori with fresh water; and

h) for sustaining the potential for fresh water to meet the reasons ... [1]

Comment [Jas5]:

The BOI version had (*emphasis added*):

Objective E1

To **protect** the quality of outstanding fresh water, to **enhance** the quality of all fresh water contaminated as a result of human activities, and to **maintain** the quality of all other fresh water.

Comment [Jas6]: The Cabinet paper makes clear this allows for some freshwater bodies to be degraded as long as offsets (not defined) are provided.

Comment [Jas7]: This appears to apply to diffuse discharges from animals (see Policy A4), so if councils define BPOs rigorously this could lead to significant improvement once regional plans are amended to require this. However, there are tests in other parts of the RMA before BPOs can be required. Litigation over this can be expected.

Policy A4 and direction (under section 55) to regional councils

By every regional council amending regional plans (without using the process in Schedule 1) to the extent needed to ensure the plans include the following policy to apply until any changes under Schedule 1 to give effect to Policy A1 and Policy A2 (freshwater quality limits and targets) have become operative:

“1. *When considering any application for a discharge the consent authority must have regard to the following matters:*

- a. *the extent to which the discharge would avoid contamination that will have an adverse effect on the life-supporting capacity of fresh water including on any ecosystem associated with fresh water and*
- b. *the extent to which it is feasible and dependable that any more than minor adverse effect on fresh water, and on any ecosystem associated with fresh water, resulting from the discharge would be avoided.*

Comment [jas8]: Only applies to activities that require a consent, whereas BOI version applied to any change in the character, scale or intensity of an activity until a council has set water quality standards for all freshwater bodies and set rules to require that these be met.

2. *This policy applies to the following discharges (including a diffuse discharge by any person or animal):*

- a. *a new discharge or*
- b. *a change or increase in any discharge –*

of any contaminant into fresh water, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering fresh water.

3. *This policy does not apply to any application for consent first lodged before the National Policy Statement for Freshwater Management takes effect on 1 July 2011.*”

Comment [jas9]: This is already required under the RMA. A council need only “have regard to” these things, which is what they do now.

Comment [jas10]: It is useful to finally have acknowledgement of what the RMA has said for 20 years, that animal waste to land (where it may enter water) is a “discharge” under the Act and requires a consent or permission in a regional plan.

But the only councils that require consent for this kind of discharge (EW and BOPRC), already have more stringent conditions, so this policy will have no effect on the main source of the problem – diffuse pollution – unless more councils require consent for diffuse discharge from intensive livestock farms.

However, note A3 above.

B. Water quantity

Objective B1

To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the taking, using, damming, or diverting of fresh water.

Objective B2

To avoid any further over-allocation of fresh water and phase out existing over-allocation.

Objective B3

To improve and maximise the efficient allocation and efficient use of water.

Objective B4

To protect significant values of wetlands.

Policy B1

By every regional council making or changing regional plans to the extent needed to ensure the plans establish freshwater objectives and set environmental flows and/or levels for all bodies of fresh water in its region (except ponds and naturally ephemeral water bodies) to give effect to the objectives in this national policy statement, having regard to at least the following:

- a. the reasonably foreseeable impacts of climate change
- b. the connection between water bodies.

Policy B2

By every regional council making or changing regional plans to the extent needed to provide for the efficient allocation of fresh water to activities, within the limits set to give effect to Policy B1.

Policy B3

By every regional council making or changing regional plans to the extent needed to ensure the plans state criteria by which applications for approval of transfers of water take permits are to be decided, including to improve and maximise the efficient allocation of water.

Policy B4

By every regional council identifying methods in regional plans to encourage the efficient use of water.

Comment [jas11]: Councils are already required to do this.

The BOI version said (*emphasis added*):
Policy D1
By every regional council making or changing regional plans to ... allocate fresh water ... at rates that (having regard to reasonably foreseeable impacts of climate change) *enable environmental flows and levels to be fully sustained.*

Policy B5

By every regional council ensuring that no decision will likely result in future over-allocation – including managing fresh water so that the aggregate of all amounts of fresh water in a water body that are authorised to be taken, used, dammed or diverted – does not over-allocate the water in the water body.

Policy B6

By every regional council setting a defined timeframe and methods in regional plans by which over-allocation must be phased out, including by reviewing water permits and consents to help ensure the total amount of water allocated in the water body is reduced to the level set to give effect to Policy B1.

Policy B7 and direction (under section 55) to regional councils

By every regional council amending regional plans (without using the process in Schedule 1) to the extent needed to ensure the plans include the following policy to apply until any changes under Schedule 1 to give effect to Policy B1 (allocation limits), Policy B2 (allocation), and Policy B6 (over-allocation) have become operative:

1. *When considering any application the consent authority must have regard to the following matters:*
 - a. *the extent to which the change would adversely affect safeguarding the life-supporting capacity of fresh water and of any associated ecosystem and*
 - b. *the extent to which it is feasible and dependable that any adverse effect on the life-supporting capacity of fresh water and of any associated ecosystem resulting from the change would be avoided.*
2. *This policy applies to:*
 - a. *any new activity and*
 - b. *any change in the character, intensity or scale of any established activity – that involves any taking, using, damming or diverting of fresh water or draining of any wetland which is likely to result in any more than minor adverse change in the natural variability of flows or level of any fresh water, compared to that which immediately preceded the commencement of the new activity or the change in the established activity (or in the case of a change in an intermittent or seasonal activity, compared to that on the last occasion on which the activity was carried out).*
3. *This policy does not apply to any application for consent first lodged before the National Policy Statement for Freshwater Management takes effect on 1 July 2011.”*

Comment [jas12]: See comment re Policy A4 (above):

This is already required under the RMA. A council need only “have regard to” these things, which is what they do now.

C. Integrated management

Objective C1

To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment.

Policy C1

By every regional council managing fresh water and land use and development in catchments in an integrated and sustainable way, so as to avoid, remedy or mitigate adverse effects, including cumulative effects.

Policy C2

By every regional council making or changing regional policy statements to the extent needed to provide for the integrated management of the effects of the use and development of land on fresh water, including encouraging the co-ordination and sequencing of regional and/or urban growth, land use and development and the provision of infrastructure.

Comment [jas13]: This has survived from the BOI version, except that the words "remedy and mitigate" have been added where the BOI simply said "avoid", and there is little guidance on how this should be done.

D. Tāngata whenua roles and interests

Objective D1

To provide for the involvement of iwi and hapū, and to ensure that tāngata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.

Policy D1

Local authorities shall take reasonable steps to:

- a. involve iwi and hapū in the management of fresh water and freshwater ecosystems in the region
- b. work with iwi and hapū to identify tāngata whenua values and interests in fresh water and freshwater ecosystems in the region and
- c. reflect tāngata whenua values and interests in the management of, and decision-making regarding, fresh water and freshwater ecosystems in the region.

Comment [jaa14]:

BOI version said (*emphasis added*):

Objective B1

To ensure that tāngata whenua are involved, and Māori values and interests are recognised and provided for, in the management of fresh water and associated ecosystems.

E. Progressive implementation programme

Policy E1

- a. This policy applies to the implementation by a regional council of a policy of this national policy statement.
- b. Every regional council is to implement the policy as promptly as is reasonable in the circumstances, and so it is fully completed by no later than 31 December 2030.
- c. Where a regional council is satisfied that it is impracticable for it to complete implementation of a policy fully by 31 December 2014, the council may implement it by a programme of defined time-limited stages by which it is to be fully implemented by 31 December 2030.
- d. Any programme of time-limited stages is to be formally adopted by the council within 18 months of the date of gazetting of this national policy statement, and publicly notified.
- e. Where a regional council has adopted a programme of staged implementation, it is to publicly report, in every year, on the extent to which the programme has been implemented.

Comment [jas15]: This timeline is as recommended by the Board of Inquiry. The policies in the Board of Inquiry's version would have created a strong incentive for councils to act quickly by requiring resource consent for all land use intensification, until such time as standards and policies have been established. The NPS removes this imperative, but leaves the generous timeline in place.

The BOI version had the following general objective, which the Cabinet paper (p.11) says gave precedence to environmental values and has been deleted to “provide a better balance of all values”.

A. General objective

Objective A1

To manage fresh water in a way and at a rate that –

1) maintains, and to the extent practicable, restores and enhances the intrinsic values of fresh water:

a) in the interdependence of the elements of the freshwater cycle;
and

b) in the natural form, character, functioning and natural processes of water bodies; and

c) in natural and healthy conditions free from alterations resulting from human activity;
and

d) in healthy ecosystem processes functioning naturally; and

e) for safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

f) for providing healthy ecosystems supporting the diversity of indigenous species in sustainable populations; and

g) for sustaining cultural and traditional relationships of Māori with fresh water; and

h) for sustaining the potential for fresh water to meet the reasonably foreseeable needs of future generations; and

2) (while not detracting from attaining clause 1), enables people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety.