



THE ASSOCIATION FOR RESOURCE MANAGEMENT PRACTITIONERS

Te Kahui Ture Taiao

Proposed Amendments to the National Policy Statement (Freshwater Management)

TO: watercomments@submissions.mfe.govt.nz

Submission on behalf of the Resource Management Law Association of New Zealand Inc

- 1 This is a Submission regarding the proposed amendments to the National Policy Statement (Freshwater Management) ("**NPSFM**") made on behalf of the Resource Management Law Association of New Zealand Inc ("**RMLA**").
- 2 The RMLA is concerned to promote within New Zealand:
 - (a) An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework;
 - (b) Excellence in resource management policy and practice; and
 - (c) Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
- 3 The RMLA comprises a diverse membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives etc. Currently the Association has over 1,100 members.
- 4 Within such an organisation there is inevitably a divergent range of interests and views.
- 5 It is not possible for the RMLA to form a single universally accepted view on the proposed amendments to the NPSFM. It should also be noted that a number of members may be putting in their own submissions and those may represent quite different approaches than the views expressed here.
- 6 For these reasons, this submission is made with a view to ensure that the amendments:
 - (a) Are consistent with the general framework of existing laws, regulations and policies of relevance, and work alongside the Resource Management Act 1991 ("**RMA**") where

relevant, including within the context of the NPSFM as it stands (as well as regional plan frameworks that have been promulgated to date to give effect to the NPSFM).

- (b) Are practicable and workable.
- (c) Will assist in promoting best practice.

Overall quality of fresh water

- 7 **Specific matter:** The proposed amendment to Objective A2 clarifies what is meant by the requirement that the overall fresh water quality is to be maintained or improved:

The overall quality of fresh water within a ~~region~~ is freshwater management unit is maintained or improved

- (a) **Submission:** This amendment is supported as it clarifies the geographic scale over which this objective is to be measured as being within each fresh water management unit. The amendment removes the uncertainty that had been previously apparent. The amendment is consistent with the Environment Court's application of the previous wording also (see for example *Ngati Kahungunu Iwi Inc v Hawkes Bay Regional Council* [2015] NZEnvC 50).
- (b) **Recommendation:** Implement the proposed change.

Contact with fresh water

- 8 **Specific matter:** Proposed new Objective A3, proposed new Policy A5, proposed new Policy CA2(f) (iaaa), associated relevant proposed new definitions and Appendix 2 Attribute Table for "Human Health for Recreation":

Objective A3

The quality of fresh water in large rivers and lakes is improved so the risk to human health is reduced and they are suitable for immersion more often

Definitions

"Large rivers and lakes" means for the purposes of Objective A3, Policy A5, Policy CA2(f) (iaaa), rivers that are fourth order or above, and lakes larger than 1.5 kilometres in perimeter on average

"suitable for immersion more often" means reducing the frequency and magnitude of E.coli exceedances over time, according to the monitoring methodology included in Appendix 5

"Contact with freshwater" means all recreational contact with water on a spectrum from activities involving occasional immersion to those involving frequent immersion

Policy A5

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

(a) identify large rivers and lakes and whether they are suitable for immersion and;

(b) state what improvements will be made to large rivers and lakes so they are suitable for immersion more often and over what timeframe.

*For the purposes of A5 (a) **suitable for immersion** means large rivers and lakes in Attribute State A, B or C in the C.coli attribute table in Appendix 2 of this national policy statement*

Policy CA2(f) (iaaa)

By every regional council, following discussion with communities, including tangata whenua, applying the following processes in developing freshwater objectives for all freshwater management units:

...

(f) considering the following matters at all relevant points in the process described in Policy CA2 (a) – (e)

(iaaa) how to improve the quality of fresh water in large rivers and lakes so the human health risk is reduced and they are suitable for immersion more often;

...

(a) **Submission:** The proposed objective and policies are not specific to recreational immersion only. However the "Human health for recreation" attribute table in Appendix 2, and the definition of "contact with freshwater" are specific to recreational contact only. There is therefore lack of clarity and an inconsistency about whether the proposed amendments are intended to protect human health associated with recreational immersion only, or human health associated with immersion generally, say for example associated with non-recreational activities such as gathering on mahinga kai, and work related activities that could involve immersion.

(b) On the assumption that the proposed amendments are intended to take an effects based approach, and protect human health associated with immersion generally, it appears that the definition of "contact with freshwater" and the "value" in the title of the attribute table in Appendix 2 requires amendment to bring it in line with the general objective and policies, and to reduce uncertainty.

(c) **Recommendation:** Amend the definition of "contact with freshwater" as follows:

"Contact with freshwater" means all ~~recreational~~ contact with water on a spectrum from activities involving occasional immersion to those involving frequent immersion

Amend the title to the attribute table in Appendix 2 as follows:

Human health for ~~recreation~~ immersion

9 **Specific matter:** As set out above, there is a proposed new definition for "suitable for immersion more often", proposed new Objective A3 sets the target as making lakes and rivers "suitable for immersion more often" and the proposed new policy A5 requires that regional councils amend plans to "state what improvements will be made....so they are suitable for immersion more often and over what timeframe"

(a) **Submission:** While Policy A5 cross refers to the attribute table in Appendix 2, the definition of "suitable for immersion more often" does not. And while the consultation document refers to the target of making 90% of rivers and lakes swimmable by 2040, this target is not reflected specifically in the proposed amendments to the NPS.

(b) There is therefore a disconnect between what the consultation document states is the objective, and the actual objective and actions set out in the proposed changes to the NPS. When Regional Councils act to give effect to the amended NPS, there is currently nothing in the proposed amendments that require Councils to implement measures that will achieve the government's stated target of 90% of rivers and lakes being swimmable 2040.

- (c) **Recommendation:** Amend proposed Objective A3, policy A5 so that the target is not just "suitable for immersion more often" but is tied to achieving the stated goal in the consultation document of making 90% of rivers and lakes swimmable by 2040.

Monitoring of bathing season

10 **Specific matter:** Proposed amendments to Policy CB1, and new Appendix 5 set out new monitoring requirements for Regional Councils to give effect to, along with requirements in new policy CB2 to ensure information gathered is made available to the public.

- (a) **Submission:** it is not clear how the monitoring and reporting requirements relate to and overlap with the general requirement under section 35 of the RMA, for Councils to gather information, monitor and keep records. In particular section 35 (2A) requires:

Every local authority must, at intervals of not more than 5 years, compile and make available to the public a review of the results of its monitoring under subsection (2)(b).

- (b) Proposed new policy CB2 states: *By every regional council taking reasonable steps to ensure information gathered in accordance with Policy CB1 is available to the public, regularly and in a suitable form.*
- (c) In February 2015 the RMLA submitted on a similar point regarding the proposed amendments to the NPSFM 2011 Discussion Document. As submitted as paragraph 26 of that previous submission, the proposed amendments arguably make the regional council's undertaking more complex by introducing a new requirement, separate to section 35.
- (d) It would assist if the relationship between section 35 (2A) and Policy CB2 were clarified. In particular, more guidance or direction could be given to Councils as to what "regular" reporting is. There could also be additional direction that not only is "regular" reporting required, but that this information is specifically to be included in the reporting requirement imposed by section 35 (2A).
- (e) Proposed new Appendix 5 sets out the monitoring methodologies to be given effect to through proposed changes to Policy CB1. Appendix 5 refers to *"during the bathing season (as specified in the regional plan)..."*. However, there is no actual requirement in the proposed changes to policy CB1 or anywhere else in the proposed amended NPS for regional plans to specify the "bathing season". Policy CB1 requires development of a "monitoring plan" but there is no requirement that regional plans be amended to include identification of a "bathing season".
- (f) The specification of the "bathing season" will obviously tie in to proposed new Objective A3 and Policy A5 also, as the attainment of the immersion related objectives are clearly most relevant to "bathing season".
- (g) **Recommendation:** Amend, and make more specific proposed policy CB2 in terms of reporting and making information available, to give councils more clarity and certainty about how regular reporting is required, and the corresponding relationship with the more general reporting requirements imposed by section 35 (2A).
- (h) RMLA recommends that priority be given to training, assistance and provision of methodologies for freshwater monitoring that Councils can use, including to ensure that the freshwater monitoring data can be compared on a regional and national basis.
- (i) Amend proposed Policy A5 and proposed amendments to policy CB1, so that Councils are required to specify the "bathing season" as referred to in proposed new Appendix 5.

Progressive implementation

11 **Specific matter:** Policy E1 has been amended so that it is clear that policy E1 regarding implementation applies to both the objectives and policies of the national policy statement is acceptable.:

(a) This policy applies to the implementation by a regional council of the ~~a-policy~~ objectives and policies of this national policy statement.

(b) every regional council is to implement the ~~policy~~ objectives and policies as promptly as is reasonable in the circumstances, and so it is fully completed by no later than 31 December 2025.

(a) **Submission:** This amendment removes the previous uncertainty as to whether immediate giving effect to of the objectives was required, alongside the staged progressive implementation of the policies. This previous disconnect in terms of the timing of the requirement to give effect to the provisions of the NPS had been a cause for debate in the development of regional plans. The RMLA supports the certainty that comes with the proposed amendment.

(b) **Recommendation:** Implement the proposed amendments.

12 If there is any further opportunity to do so, the RMLA wishes to be heard in support of this submission.



Signature of Maree Baker-Galloway on behalf of the Resource Management Law Association

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