

Submission on the discussion document on national direction for freshwater

For the Ministry for the Environment

Prepared by the New Zealand Planning Institute – 31st October 2019

INTRODUCTION

1. This submission is made by **the New Zealand Planning Institute**.
2. Established in 1949, the New Zealand Planning Institute (NZPI) is the home of planning in New Zealand and has 11 active branches both within New Zealand and overseas. Our growing membership of over 2000 members are involved in strategic planning initiatives and implementation of urban and rural plans. NZPI delivers extensive training, networking opportunities, advocacy, real time planning news, mentoring, professional standards monitoring, accreditation of tertiary planning education in NZ and good practice guidance through the Quality Planning resource.

SUBMISSION

3. This submission briefly addresses the proposed discussion document on national direction for the essential freshwater (action for healthy waterways) and its key proposals. Its focus is the proposed NPS on Freshwater Management.

Summary

4. NZPI supports the intent of national directions to improve water quality, ecosystem health, and to increase protection for wetland and stream systems. And in principle, we support building on the Te Mana o te Wai framework of the current NPS and stronger national guidance for managing freshwater.
5. However, NZPI has significant concerns which are listed here, along with NZPI submission summaries, which are explained and enlarged upon in the rest of this submission:
 - **Inconsistency with the purpose of the RMA** (NZPI submits that as drafted the main objective of the NPSFWM conflicts with the purpose of the RMA and is therefore ultra-vires.)
 - **Absence of guidance and support for TLA actions to restore degraded resources** (NZPI submits the NPSFWM requires actions from councils that are likely to incur considerable unbudgeted costs to resolve issues caused by third parties.)
 - **Lack of coordination with other related national guidance** (NZPI submits that NPSFWM proposals will need to be weighed against national directions set out in other NPS's – including NPS Urban Development [NPSUD] and NPS Highly Productive Land [NPSHPL] – but their separateness precludes integrated guidance.)
 - **Absence of consideration of implementation capacity requirements** (NZPI submits the additional compliance, monitoring and enforcement duties, and changing policy priorities, imposed by NPSFWM proposals, will require significant new capacity and capability requirements within councils.)

6. While NZPI generally supports the broad objective of the proposed package of initiatives to protect and enhance the quality of freshwater systems and wetlands, we are concerned as to the workability and operability of many of the proposals.

Inconsistency with the purpose of the RMA

7. Objective 2.1 of the proposed NPSFWM places the health and wellbeing of waterbodies and freshwater systems ahead of the essential health needs of people and then ahead of the ability of people to provide for their economic and social wellbeing. This appears to directly contradict, or re-prioritise, the duty imposed on TLAs (for example) by section 5 of the RMA which is to manage land and freshwater in a way and at a rate that enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety, while sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and etc.
8. The guidance is unclear whether TLA's could or should weigh in favour of Objective 2.1 over the policy basis of Section 5 of the Act. This interpretation question would inevitably lead to expensive and challenged Environment Court proceedings.

Absence of guidance and support for TLA actions to restore degraded resources

9. In the Discussion Document, the Government is proposing the following key changes to the NPS-FM (drawn from the submission of Environmental Defence Society – EDS). Many of these appear to require new and hitherto unfunded actions on the part of regional councils:
 - Speeding up regional council plan implementation.
 - Further clarification on the meaning of Te Mana o te Wai including establishing a clear hierarchy of obligations.
 - Elevating the status of mahinga kai to a compulsory value.
 - Creating a new tangata whenua freshwater value.
 - Inserting new provisions to strengthen the achievement of ecosystem health.
 - Requiring councils to take action if macroinvertebrates (rivers), fish (rivers), dissolved oxygen (rivers and lakes) and macrophytes (lakes) breach a specified threshold.
 - Improving protection for threatened indigenous species.
 - Requiring fish passage.
 - Improving protection of wetlands.
 - Strengthening protection for urban streams.
 - Suggesting new bottom lines for nutrients (Nitrogen and Phosphorous).
 - Suggesting opt-out measures for rivers that support naturally occurring high periphyton biomass.
 - Requiring councils to take action if deposited sediment exceeds a specified threshold.
 - Adding a new attribute for suspended sediment that includes bottom lines.
 - Requiring action plans where swimming sites are impacted by faecal matter.
 - An improved process for establishing flows.
10. Several actions are required of regional councils which are likely to incur significant implementation costs. As well as the above actions (where macroinvertebrate, fish, dissolved oxygen, macrophyte levels breach specified thresholds; if deposited sediment exceeds a

specified threshold; where swimming sites are impacted by faecal matter), the NPS requires councils to phase-out over allocation of water; and to adopt methods to remedy the cumulative adverse effects of land use on freshwater ecosystems and sensitive receiving environments resulting from urban development.

11. NZPI is concerned by the lack of implementation guidance that accompanies these required actions. For example, where a water body has been “over-allocated”, and where users wish to continue their uses, what method would be appropriate to deliver the policy? Over-allocated water rights would presumably have an economic value and some sort of compensation would be expected in exchange for giving up that right. Similarly, where an urban water body has been damaged – but is not beyond repair - from years of accumulated sedimentation due to runoff from urban subdivision and development, who would fund remediation costs?
12. NZPI supports NPSFWM objectives of cleaning up waterways and reducing demands on freshwater resources to sustainable levels, but submits that these actions will require resourcing. In the US (for example) the Environmental Protection Agency applies mechanisms such as EPA Grants, the SuperFund, and Clean River programs for such purposes.

Lack of coordination with other related national guidance

13. NZPI’s interest and concern is how to effectively operationalise separate pieces of national guidance and direction, in order to achieve alignment and consistency while enabling expected trade-off processes, and to avoid endless conflict. There appear to be at least three optional approaches:
 - Maintain separate NPS’s. Eg NPSUD, NPSFWM and NPSHPL. However this would require regions up and down the country to individually interpret and prioritise separate national guidance and policy statements when considering activities, risking inconsistent approaches and outcomes, and leading to uncertainty and legal challenge.
 - Separate NPSUD, NPSFWM and NPSHPL (and other NPS’s) with an integrating National Development Policy Framework (like UK) or perhaps an over-arching General Policy Statement. This would set out priorities and provide hierarchy, measures and criteria for decision-making. Currently as written the NPSFWM would override the NPSUD which itself has the potential to keep overriding the NPSHPL “avoiding” statement if the development is deemed appropriate.
14. One of the key issues that practitioners are raising is how the various NPS’s work together – as there is significant tension between them. Overall, NZPI favours Option 2 from this list. Members have worked in the UK using that regime and it appears logical and practical. MfE may not have an appetite for this or consider this approach should be left to the RMA Review Panel and process, but this will not address at a strategic level how national policy statements work together. In our submission this can’t be left to individual practice and case law.

Absence of consideration of implementation capacity requirements

15. NZPI is concerned by the lack of consideration given to whether there is sufficient capacity and capability within council and industry and iwi to effectively deliver the proposals within the timeframes set out in the various directions.

16. NZPI is aware that compliance, monitoring and enforcement have often been underfunded and under-resourced within regional councils, where emphasis has traditionally been placed on plan writing and consent processing – particularly to process consents within statutory timeframes. While NZPI notes and accepts that there are significant and increasing problems with water quality in many of NZ's water bodies, the momentum nationally and with planning processes has been to extract and deliver more water for economic activities. Many of the proposals in the NPSFWM seek to intervene and change this pattern of activity, in order to better protect and enhance the quality of our country's freshwater resources. The setting of, and giving effect to, bottom-lines is one such example.
17. Given that the proposed approach is – to an extent new policy territory which will need to be appropriately resourced centrally (how else can it be resourced), NZPI supports staged implementation, based on a strategy where grant or funding support is made available to councils committed to change.

Request to be heard

18. If there is any further opportunity to do so, the New Zealand Planning Institute wishes to be heard in support of this submission.

Date: 31st October 2019

Contact: David.Curtis@planning.org.nz

David Curtis

CEO

New Zealand Planning Institute

P: +64 9 520 6277 ext 3 | M: +64 21 625 244 | www.planning.org.nz

Ends