

4 November 2019

Ministry for the Environment  
Wellington

By email: [consultation.freshwater@mfe.govt.nz](mailto:consultation.freshwater@mfe.govt.nz)

**Re: Action for healthy waterways: a discussion document on national direction for our essential freshwater**

**Introduction**

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the discussion document: *Action for healthy waterways: A discussion document on national direction for our essential freshwater* (discussion document).
2. This submission sets out our responses to several questions raised in the discussion document only in relation to the proposed National Policy Statement for Freshwater Management (NPS-FM). Our responses below address matters of workability and identifies issues with the NPS-FM for consideration by the Ministry for the Environment (Ministry).
3. The Law Society acknowledges the need for the simultaneous release of a suite of proposed reforms, however, given the number of reforms<sup>1</sup> introduced in a relatively short period of time, consideration should have been given to allowing adequate stakeholder and public engagement to ensure effective participation in the consultation process.

**Discussion Document**

**Chapter 1: Overview – the health of our nation depends on the health of our freshwater**

**Q6: Can you think of any unintended consequences from these policies that would get in the way of protection and/or restoration of ecosystem health?**

4. The Law Society suggests it is important to consider how the proposed NPS-FM will integrate and work together with other existing National Policy Statements (NPS), including the NPS for Renewable Energy Generation and the proposed NPSs for Urban Development and Highly Productive Land. For example, urban design and planning required under NPSs could have the potential to impact on how freshwater systems are managed and how developments occur around freshwater bodies.
5. Further, we consider it is important to recognise how the proposals will work with the existing (non-Resource Management Act 1991) regulatory regimes for freshwater, freshwater management and the management of indigenous freshwater species, including Tuna (eels) as

---

<sup>1</sup> For example, the draft National Policy Statement on Urban Development and the draft National Policy Statement on Highly Productive Land.

well as introduced species such as trout and salmon, to avoid issues of interpretation and enforcement. These regimes include those contained within the Conservation Act 1987 (for example the transfer or release of live aquatic life), the Freshwater Fisheries Regulations 1983.

Q7: Do you think it would be a good idea to have an independent national body to provide oversight of freshwater management implementation, as recommended by KWM and FLG?

6. While in principle a separate independent national body to oversee freshwater management could offer some benefits (such as consistency in decision making), it may also give rise to complexities in terms of which entity (the national body or the regional council) has responsibility for freshwater management, compliance and enforcement.

#### Chapter 4: Setting and clarifying policy direction

Q17: Do you support the proposal for a faster freshwater planning process?

7. The Law Society has two comments in response to this question.
8. First, faster processes do not necessarily mean better processes. Care should be taken to ensure that any process is robust and ensures good planning outcomes. If consultation needs to be carried out, then that needs to be allocated adequate time.
9. Secondly, it is important to ensure that any such processes integrate with existing regional council planning processes. The planning process is lengthy, resource intensive and difficult to manage. The Ministry may wish to consider whether providing regional councils with the option to incorporate freshwater planning into other planning processes would alleviate these difficulties. It would be prudent to consider what timeframes are realistic for each specific region, including that those impacted will need sufficient time to implement the proposals.

#### Chapter 5: Raising the bar on ecosystem health

Q30: Do you support introducing new bottom lines for nitrogen and phosphorus? Why/why not?

10. Currently, the introduction of 'national bottom lines' in the draft NPS-FM does not account for the natural variability which occurs in different ecosystems. Creating national limits for nutrients which are not catchment specific could create flow on effects across all sectors. The Law Society considers it would be useful for the NPS-FM to include a mechanism to account for differences across ecosystems and/or catchments. Further, it would be helpful if the NPS-FM (or supporting material) provide guidance on how to set, monitor and enforce the national bottom lines.

#### Chapter 8: Improving farm practices

Q57: Do you have any comment on what would be required to ensure this proposal could be effectively implemented, including options for meeting the cost of preparing, certifying and auditing of farm plans; and on financing options for other on-the-ground investments to improve water quality?

11. It may be useful for the relevant Ministry to provide template farm plans or at the least, guidance as to the specific matters that farm plans should cover.

## **Draft NPS-FM**

12. The Law Society suggests some provisions in the draft NPS-FM would benefit from further consideration or clarification, to ensure the proposed National Policy Statement remains clear and workable in practice. These are discussed further below.

### **3.4 Integrated Management**

13. Clause 3.4(1)(b) refers to the obligations placed on regional councils regarding integrated management including the obligation to:

*“manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects.”*

14. However, clause 3.4(5) of the NPS-FM reads:

*“Every regional council must insert the following method (or words to the same effect) into its regional policy statement:*

*“District plans must include objectives, policies, and methods to avoid, remedy, or mitigate the cumulative adverse effects of land use on freshwater bodies, freshwater ecosystems, and sensitive receiving environments resulting from urban development.””*

15. This clause refers only to the effects of ‘urban development’. The difference in language between ‘land use and development’ in clause 3.4(1)(b) and ‘urban development’ in clause 3.4(5) may result in uncertainties in interpretation. Other land uses could be a significant contributor to freshwater degradation and impacts on water ways. We suggest this should be broadened to include the other potential causes of freshwater pollution.

### **3.6 Identifying FMUs and monitoring sites**

16. Clause 3.6 requires regional councils to identify freshwater management units (FMUs). Clause 1.6 defines as FMU as “all or any part of a waterbody or waterbodies, and their related catchments, that a regional council determines under clause 3.6 is an appropriate unit for freshwater management and accounting purposes”. It would be helpful if the NPS included guidance or non-exhaustive criteria for how the regional council should undertake that identification process.

## **Conclusion**

17. This submission has been prepared by the Law Society’s Environmental Law Committee. If further discussion would assist, please do not hesitate to contact the committee convenor, Bronwyn Carruthers, via the Law Society’s Law Reform Adviser Emily Sutton ([emily.sutton@lawsociety.org.nz](mailto:emily.sutton@lawsociety.org.nz)).

Yours faithfully



Herman Visagie  
**Vice President**