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Ministry for the Environment
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Tēnā koe,

Feedback on Draft National Policy Statement for Indigenous Biodiversity – Exposure Draft (NPS-IB)

Thank you for the opportunity to submit on the exposure draft of the NPS-IB. With the identification and protection of indigenous biodiversity under the Resource Management Act being a topic that generates a range of often polarising views within communities, the Council is very pleased to see this National Policy Statement progress and we urge the Government to see it through to Gazettal as soon as possible. Our submission focuses only on the draft NPS-IB provisions that the Council particularly supports or has significant concerns.

Definition for Indigenous Biodiversity

As currently worded the definition for *indigenous biodiversity* and its reference to *...living organisms that occur naturally in New Zealand...* could be interpreted to include species that have become naturalised in New Zealand but are not endemic. This could include undesirable pest species that now naturally occur in New Zealand (for example, Old Man's Beard *Clematis vitalba*).

We request the definition is amended to remove any potential ambiguity.

Clause 3.8 (3) Regional Council assistance

We support this clause. The identification of district-wide SNAs is a resource-intensive exercise that would benefit from assistance from the regional council.

Clause 3.8 (5) Assessing areas that qualify as significant natural areas

This clause requires the Council to conduct an assessment of the indigenous biodiversity values of any areas that may be a SNA that are identified as a result of a resource consent application, notice of requirement or other means. If the assessment concludes the area qualifies as a SNA the Council must include the SNA in the next plan change notified by the Council.

This will result in some unusual complications for plan changes that have nothing to do with SNAs. We foresee a situation commonly occurring where staff discover potential SNAs at the latter stages of plan development prior to seeking Council approval for public notification of the next plan change. We doubt the Ministry wishes the NPS-IB to result in slowing down important plan changes that seek to address other important issues, and we seek that the drafting of the NPS-IB avoids this inadvertent consequence. This could be achieved by providing the option of including the SNA in the next plan change *or* in a plan change publicly notified within a certain period after the SNA is first identified.

Notwithstanding the issue identified above, we agree with the likely risk to identified SNAs if they are not subject to some protections in a timely manner. For some landowners, the knowledge that a site is to be protected via a future plan change may provide an incentive to remove it before it is protected to ensure any future plans for the development of their property will not be obstructed by the notification of a SNA within a plan change. To manage this risk more comprehensively, the NPS-IB could include a method to achieve interim protection of the identified SNAs, such as requiring conditions of consent be imposed under section 108(2)(c) to protect the identified natural resource.

Clause 3.9 Identifying SNAs in district plans

We oppose the current wording of Clause 3.9 as it does not provide an exception to the requirements of section 76(4A)-(4D) of the Act for the identification and protection of indigenous trees and groups of trees within a SNA that are within an urban environment allotment.

The additional costs and resourcing required with having to meet the requirements of section 76(4A)-(4D) should not have to be met by Councils if identifying and protecting significant indigenous trees and groups of trees on urban environment allotments is required for the purposes of giving effect to the NPS-IB.

In practical terms, Kapiti's experience in attempting to protect significant indigenous trees within SNAs on urban environment allotments under the requirements of section 76(4A)-(4D) has resulted in many significant indigenous trees on urban environment allotments not being protected under the district plan. The costs associated with the identification and description of thousands of significant indigenous trees within SNAs has meant the Council has focused its efforts on the top 20% of such trees and groups of trees with respect to their assessed biodiversity values (as individual trees or groups of trees separate from the described SNA values). This leaves the other 80% of significant indigenous trees within SNAs on urban environment allotments unprotected.

We therefore request a specific exclusion to the requirements of section 76(4A)-(4D) be added to Clause 3.9 for indigenous trees and groups of trees that are identified within SNAs on urban environment allotments.

Clause 3.10 Managing adverse effects on SNAs of new subdivision, use, and development

This clause and its mandatory requirement to avoid specific effects remains of some concern to Council. We voiced our concerns with the same avoidance requirement in our feedback on the discussion document *He Kura Koiora I hokia* in March 2020.

We recognise the efforts made in clause 3.11 to provide exceptions, but we are concerned that:

- Councils will face considerable costs through Court actions determining if an exception should apply (e.g., in respect of what constitutes a "very high risk" in cl.3.11(5)(a));

- the exclusions are all activities that are likely to result in significant adverse effects on the indigenous biodiversity values within SNAs, which demonstrates the inequality of the types of activities and their resulting adverse effects that would be captured by the avoidance requirement of Clause 3.10.

The broad and varied nature of the exceptions provided in clause 3.11 is, we suggest, evidence of how fundamentally flawed the avoid approach is in this context.

We remain concerned that the avoidance requirement of Clause 3.10 will undermine existing and future district plan provisions that seek to support and provide for reasonable and practical activities such as trimming and modification of vegetation within a SNA that is causing safety or access issues around buildings, accesses, and private outdoor living areas. Other desirable activities such as the installation and maintenance of tracks to provide access for pest management may also be captured by this avoidance direction. In some instances, such works may result in the type of effects Clause 3.10 seeks to avoid, however these effects can be remedied, mitigated, compensated, or offset via the use of the effects management hierarchy on a case-by-case basis.

We note the effects management hierarchy is a fundamental concept identified in Clause 1.5 (4), and this starts with an avoidance requirement, but then provides for the minimisation, remedying, offsetting and compensation to be applied where practicable or demonstrably possible. We support this approach and request it be applied to all activities that may have an effect on an SNA, not just the specific activities listed in Clause 3.11.

We request the avoidance direction in Clause 3.10 be deleted in its entirety in favour of the effects management hierarchy approach specified in Clause 1.5(4) to be applied to all activities.

Clause 3.16 – Maintaining indigenous biodiversity outside of SNAs

Applying an effects management hierarchy to the management of effects on indigenous biodiversity to all areas outside SNAs is difficult to achieve in the absence of the identification of such areas, and clear standards specifying where a resource consent would be required.

We consider it is uncertain how this requirement could be applied in a district plan due to its all-encompassing use of the term ‘any adverse effects on indigenous biodiversity’ in all areas outside of an SNA. To achieve this a resource consent would be required to enable the consideration and identification of the most appropriate level of management of adverse effects under the effects management hierarchy on a site-by-site basis. This would require the input of a suitably qualified and experienced ecologist.

We consider the focus of the NPS-IB should be on the identification and protection of known SNAs, with the application of the effects management hierarchy to all other areas outside of SNAs to be in the form of policy direction only rather than requiring the drafting of catch-all rules. The reason for this is such rules would need to apply to all subdivision, use and development, and this may require an ecologist to provide an assessment on a site-by-site basis to determine whether each site contains any indigenous biodiversity that may be affected. To achieve this, the activity status could not be Permitted or Controlled, as the Council would require the discretion to determine the most appropriate action to under the effects management hierarchy. In the absence of mapping that identifies such areas, a rule framework would need to apply everywhere, including relevant residential zones where the Council is giving effect to the Medium Density Residential Standards and Policies 3

and 4 of the National Policy Statement on Urban Development. Our understanding of the requirements of Clause 3.16 presents a clear conflict with the direction of these other national requirements.

We therefore request the requirements of Clause 3.16 either be deleted or amended to specify it requires the formulation of policies only to give effect to Policy 8.

Biodiversity Offsetting and net gain

We support the concept of achieving a measurable net gain in biodiversity as part of biodiversity offsetting. This concept recognises the losses to biodiversity to be offset elsewhere are not always a 'like for like' replacement, and therefore there should be a net biodiversity gain to help achieve the objectives of the NPS-IB.

Clause 3.17 Maintenance of improved pasture

We note the use of the term *periodic maintenance* will give rise to debate on how *periodic* is to be defined. We request greater guidance on this is provided to avoid unnecessary confusion.

Clause 3.18 Māori lands

We support the provisions to specifically work in partnership and develop provisions to enable the maintenance and restoration of indigenous biodiversity on Māori land while enabling new occupation, use and development of Māori land including papakāinga and ancillary activities. This approach recognises and provides for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, while appropriately balancing the requirement to identify and protect section 6(c) indigenous vegetation and habitats.

Clause 3.19 Identified taonga

We request guidance be provided to develop and implement processes around this clause, especially around customary use. We consider such guidance would need to be universally applicable and not inconsistent with national species recovery programs or other legislation and regulations that manage and protect indigenous biodiversity species.

Clause 3.22 Increasing indigenous biodiversity cover

We note the goal of a 10% increase in indigenous vegetation cover will be a challenge for urban areas where potentially conflicting national direction and legislative requirements apply such as the greater densities of residential development required in accordance with the Medium Density Residential Standards and the intensification required under Policy 3 of the National Policy Statement on Urban Development.

Part 4: Timing

We acknowledge and support the timeframes specified in Part 4. The timeframes recognise and provide for the necessary funding to be allocated, the assessment work to be completed, and consultation with affected landowners and stakeholders to be carried out. The Council knows through experience the identification and protection of SNAs within a district plan is a costly and time-consuming exercise. We also note appeals to the Environment Court are almost a certainty, and we acknowledge strong national direction via the NPS will greatly assist councils in carrying out this work.

Part 4: Clause 4.4 Existing policy statements and plans

We support the clarification that the Council can use clause 20A of Schedule 1 of the Act to make amendments to terminology for consistency with the NPS, and these are to be treated as corrections of minor errors.

Inconsistency of terminology used across National Policy Statements

We note there appears to be no consistency between the existing and emerging national direction on the different levels of whanau, hapū, and iwi decision making structures that must be included in giving effect to the national direction. Iwi authorities have historically been used as the engagement mechanism under the RMA, however we note that different NPS are now referencing engagement in different ways and so there are some challenges in how this is undertaken and applied consistently across different NPS's from a council perspective, but potentially for iwi authorities too, while also creating different expectations depending on what piece of national direction consultation and engagement is being carried out under.

We seek that the Ministry endeavour to reduce any unwarranted variation within and between national instruments about the terms used, and the engagement requirements required, in relation to tangata whenua.

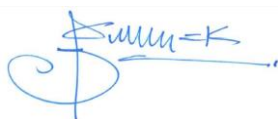
Challenges associated with monitoring targets for net gains and no reductions

A no reduction target is extremely ambitious, but we agree it is good to have. A key concern however is that this places significant reliance on having an up-to-date Biodiversity Inventory Database to begin with. The question is to what degree this is funded, and where that funding is targeted i.e., regional vs local.

These targets also suggest ongoing SNA monitoring and evaluation requirements are placed on councils. We would like greater certainty to be provided on the degree of support local authorities will be provided in developing capability in this area. We note many councils already struggle to deliver adequate levels of service in monitoring and updating databases of SNAs.

We look forward to seeing the outcomes of this consultation.

Ngā mihi



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