

13 March 2020

The National Policy Statement on Indigenous Biodiversity Panel  
Ministry for the Environment  
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Dear Panel

## **SUBMISSION**

Thank you for the opportunity to submit on *He Kura Koiora I hokia*, the discussion document on the Proposed National Policy Statement on Indigenous Biodiversity. We appreciate the opportunity this paper creates to have a conversation about the future management of New Zealand's indigenous plants and animals. Our submission is provided in two parts, an overall high-level summary of our view and responses to 61 specific questions posed in the discussion document.

### **PART 1 - OVERALL HIGH LEVEL SUMMARY**

The aspects we generally support the intent of are:

1. Hutia te Rito concept and Maori participation
2. Consistent management of biodiversity identification and protection in NZ
3. Protecting biodiversity outside SNA's
4. Inclusion of the precautionary principle
5. Offsetting and compensation consistency nationally
6. Restoration and enhancement provisions intent
7. The consideration of species viability as the climate changes.

The aspects we find most challenging are:

1. The survey of highly mobile fauna and managing impacts on them. Depending on the survey results this may be particularly challenging, for example if it leads to a requirement for plan provisions restricting the removal of exotic trees. It is also not clear what 'highly mobile fauna' includes e.g. flying insects and terrestrial species such as geckos.
2. The classification of SNA values as 'medium' is a new concept which will be open to interpretation, debate and litigation. The Council requests providing additional time to meet these requirements for Councils which already protect SNAs in their district plans. The Council considers it would be appropriate to allow such Councils to comply with this requirement at the next district plan review period.
3. Short timeframes proposed for giving effect to the NPS-IB and the potential for significant re-litigation as a result of re-opening recently settled District Plan provisions to ensure consistency with the NPS-IB.
4. The requirement to notify a plan change to map areas identified under clause 3.8 will be an expensive exercise with regard to appeals to the Environment Court. The Council requests the

NPS-IB includes a very clear and directive policy which makes it clear territorial authorities are absolutely required to give effect to the NPS-IB. The Council also requests the policy lists the types of plan provisions that will be necessary to give effect to the NPS-IB e.g. restrictive rules and standards. This would greatly assist with section 32 preparation and appeal management by potentially minimising some of the implementation costs (including legal costs).

5. The strong directive to promote restoration and enhancement by various means would be costly to implement and the Kāpiti Coast District Council would have to significantly increase the scope and scale of its biodiversity restoration programme.
6. The requirement to control activities that takes place in or affects an SNA - the effects to be avoided are very wide and difficult to quantify, as are the exceptions. With no baseline monitoring how would the Council judge whether an SNA is affected? [particularly under the precautionary approach outlined under clause 3.6].
7. The requirements of Clause 3.13 for general rules outside of SNA's are very broad, undefined and unquantifiable.
8. The definition of 'nationally significant infrastructure' does not include territorial authority infrastructure. Would territorial authority infrastructure be considered use or development that has a functional or operational need to be in a particular location under clause 3.9(2)(b)? The Council recommends this be clarified.
9. There appears to be tension between the objectives, policies and implementation requirements of the NPS-IB and those of the proposed NPS-UD. For example, do the exceptions under clause 3.9(2)(b) and (c) apply to subdivision, use and development that has been identified and provided for under the requirements of the proposed NPS-UD? If so the Council considers the Part 1 of the NPS-IB should clearly explain how it relates to all other relevant national direction.
10. The general rules applying to activities undertaken outside a SNA [clause 3.13] are very broad and difficult to quantify. The Council considers it would be appropriate for the NPS-IB to provide much greater clarity and direction within clause 3.13 (1) (a), (b), and (c).
11. Clause 3.12 – appears to provide for existing uses but only if the continuation of the activity does not lead to the loss [including through cumulative loss], of extent or degradation of the ecological integrity of any SNA. What are the legal and practical relationships between the requirements of Clause 3.12 and existing use rights provided for under RMA section 10?
12. The Council is concerned that pastoral farming as an existing activity is provided for with more certainty within clause 3.12 than existing territorial authority operational functions that are not managed under a designation.
13. How does the requirement in Clause 3.5 to consider the effects of climate change on indigenous biodiversity relate to the provision of infrastructure? The impacts of climate change on biodiversity are complex and carry a degree of uncertainty, and while the Council appreciates there are many strategic responses to climate change other than building bigger pipes to increase discharge volumes what happens if the 'precautionary approach' effectively means Council can't physically respond to climate change because it is unable to meet clause 3.5?
14. Some of the strong directive requirements, such as the requirement to avoid the loss of ecosystem extent and buffers (Under Clause 3.9 (1) (a)(i) & (ii)) are likely to expose territorial authorities to legal proceedings under RMA section 85 (plan provisions rendering land incapable of reasonable use). This is likely to occur when territorial authorities are meeting their obligations under NPS-IB Clause 3.8 to identify and map SNA's in their district plan via a RMA Schedule 1 process. Due to the natural justice issues associated with being required to

implement the NPS-IB but also being liable to pay compensation for having done so, the Council requests this risk to local authorities be eliminated.

15. The Council requests the terms *local authorities*, *regional councils* and *territorial authorities* are checked in each instance to ensure the correct term is used (e.g. Clause 3.12 which appears to require territorial local authorities to manage activities which benefit from existing use rights). It is critical for the implementation of the NPS-IB that duties, powers and functions are clearly and correctly allocated.
16. The Council requests the relationship between the NPS-IB and the requirements of RMA section 76 (4A) -(4D) is clarified. Currently the protection of trees within an *urban environment allotment*<sup>1</sup> is difficult and costly. Is it the expectation that the identification of specific trees within SNA's identified under the NPS-IB will still need to meet the requirements of these sections of the RMA?
17. While overall, Council supports the value and importance of halting the decline in indigenous biodiversity, there is significant concern about the substantial cost burden of complying with this NPS, which will largely fall on ratepayers and landowners. Council strongly advocates for availability of funding for territorial authorities to support this important work.

## PART 2 - DETAILED RESPONSES TO CONSULTATION QUESTIONS

### **Q1. Do you agree the NPS-IB is needed to strengthen requirements for protecting our native plants, animals and ecosystems under the Resource Management Act 1991 (RMA)? Yes/no? Why/why not?**

1. Yes. Clear national direction on indigenous biodiversity identification, protection, maintenance and enhancement will assist Councils to effectively implement the Resource Management Act. An improvement in the consistency of identification, monitoring and protection will result in greater certainty about the state of indigenous biodiversity and provide improvements in the maintenance and restoration of indigenous biodiversity. The directive nature of some of the proposed provisions will over time strengthen protections provided through district plans under the Schedule 1 process e.g. the requirement to *avoid* under Clause 3.9 (1) (a). The Council considers this type of strong national direction is required for a number of other important resource management issues the country faces, such as responding to climate change and managing subdivision, use and development affected by natural hazards.

### **Q2. The scope of the proposed NPS-IB focuses on the terrestrial environment and the restoration and enhancement of wetlands. Do you think there is a role for the NPS-IB within coastal marine and freshwater environments? Yes/no? Why/why not?**

1. Yes. Consideration should be given to referencing and supporting the sensible and well-reasoned recommendations on the scope of the NPS-IB contained in the report of the Biodiversity Collaborative Group (BCG) ('Scope' section under headings 'Freshwater' and 'Marine'). There is certainly a role for the NPS-IB within freshwater environments if, as the

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<sup>1</sup> RMA Section 76(4C): **urban environment allotment** or **allotment** means an allotment within the meaning of [section 218](#)—

- (a) that is no greater than 4 000 m<sup>2</sup>; and
- (b) that is connected to a reticulated water supply system and a reticulated sewerage system; and
- (c) on which there is a building used for industrial or commercial purposes or as a dwellinghouse; and
- (d) that is not reserve (within the meaning of [section 2\(1\)](#) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the [Conservation Act 1987](#) or the [Reserves Act 1977](#).

BCG pointed out, indigenous biodiversity in that environment isn't adequately protected by other means. It seems anomalous that Regional Biodiversity Strategies are required to apply to the freshwater and coastal marine environments, yet the NPS-IB is silent in relation to them. The NPS-IB should at least make clear how its provisions align with and complement other measures to ensure indigenous biodiversity in the freshwater and coastal marine environments is adequately protected and restored.

**Q3. Do you agree with the objectives of the proposed NPS-IB? Yes/no? Why/why not? (see Part 2.1 of the proposed NPS-IB)**

1. Yes. In principle, the objectives are supported.

**Q4. Hutia te Rito recognises that the health and wellbeing of nature is vital to our own health and wellbeing. This will be the underlying concept of the proposed NPS-IB. Do you agree? Yes/no? Why/why not?**

1. Yes. Council agrees with the concept that the health and wellbeing of nature is vital to the health and wellbeing of people and supports it as an underlying principle for the NPS-IB.

**Q5. Does the proposed NPS-IB provide enough information on Hutia te Rito and how it should be implemented? Yes/no. Is there anything else that should be added to reflect te ao Māori in managing Indigenous Biodiversity?**

1. The NPS-IB sets out the whakatauki in full with an explanation of the meaning in section 1.7 as well as identifying that local authorities will need to work with tangata whenua to develop meaningful and tailored objectives, policies and methods to operationalise this concept. Section 1.7 provides an indication of the concept that leaves the details to local authorities working in partnership with tangata whenua. This appears to be sufficient information to start the conversations between the parties.

**Q6. Do you think the proposed NPS-IB appropriately takes into account the principles of the Treaty of Waitangi? Yes/no? Why/why not?**

1. The NPS-IB requires that tangata whenua are involved in the development of district plan provisions, identify their values and protect taonga species. The NPS-IB appears to recognise the special status of tangata whenua as separate and distinct from other interest groups, and provides a partnership, participation and protection basis for tangata whenua involvement in achieving the objectives of the NPS-IB.

**Q7. What opportunities and challenges do you see for the way in which councils would be required to work with tangata whenua when managing indigenous biodiversity? What information and resources would support the enhanced role of tangata whenua in indigenous biodiversity management?**

1. The resources of our tangata whenua partners are often stretched due to other commitments including the development of iwi management plans, Treaty of Waitangi settlements, resource consents, and feedback on national direction/legislative consultations and contributions to other councils and wider iwi work. The Council requests additional support to be provided by central government to its Treaty partners in giving effect to all relevant national direction.

- Q8. Local authorities will need to consider opportunities for tangata whenua to exercise kaitiakitanga over indigenous biodiversity, including by allowing for sustainable customary use of indigenous flora. Do you think the proposed NPS-IB appropriately provides for customary use? Yes/no? Why/why not?**
1. The Council notes this is a question best answered by tangata whenua.
- Q9. What specific information, support or resources would help you implement the provisions in this section (section A)?**
1. Financial. Grants or other financial support for Councils or Iwi authorities to undertake assessments and enable meaningful involvement in giving effect to the NPS-IB.
- Q10. Territorial authorities will need to identify, map and schedule Significant Natural Areas (SNAs) in partnership with tangata whenua, landowners and communities. What logistical issues do you see with mapping SNAs, and what has been limiting this mapping from happening?**
1. The Kāpiti Coast already has 186 SNA sites mapped and included in the District Plan. The challenges we experienced in mapping these sites included getting access to private land to assess the sites, the cost for ecologists to complete this fieldwork, the accuracy of GPS equipment when in forest canopy areas, debates with landowners over the extents and values of these sites (including environment court appeals).
  2. Logistical issues will be to have these areas reassessed by ecologists to determine whether they are high or medium value areas, and to add any additional areas which may not have qualified previously due to the assessment methodology used by the ecologists.
  3. Inserting maps into the district plan which identify SNAs on private land is a highly contentious process which is time consuming and expensive due to the Schedule 1 process and the resulting appeals.
- Q11. Of the following three options, who do you think should be responsible for identifying, mapping and scheduling of SNAs? Why?**
- a. territorial authorities
  - b. regional councils
  - c. a collaborative exercise between territorial authorities and regional councils.
1. None of the above. The Council considers the identification and mapping should be carried out by the Department of Conservation. This would ensure consistency throughout the country, relieve and reduce friction between landowners and councils by deflecting it to a central government agency less susceptible to local pressure and influence, and draw the Department of Conservation into collaborating with councils on biodiversity protection and restoration. One of the more significant current problems with biodiversity management is the lack of collaboration between the various agencies involved. Mapping and scheduling of the sites identified by the Department of Conservation should be done by both regional and territorial authorities, also to promote a collaborative approach.
- Q12. Do you consider the ecological significance criteria in Appendix 1 of the proposed NPS-IB appropriate for identifying SNAs? Yes/No? Why/Why Not?**
1. Yes. These are very similar to the criteria set out in Policy 23 of the Wellington Regional Policy Statement which have been used to identify the sites within the Kāpiti Coast district.

**Q13. Do you agree with the principles and approaches territorial authorities must consider when identifying and mapping SNAs? (see Part 3.8(2) of the proposed NPS-IB) Yes/no? Why/why not?**

1. No. The Council supports the long-term biodiversity goals underpinning the reasoning for proposing a management hierarchy which categorises sites as either high or medium value. However, the additional requirement to categorise the sites as either high or medium will result in significant additional cost for Councils that already have SNAs protected in their district plans. The advice from Council's consultant ecologist is that SNAs cannot be simply updated to split between medium/high from a desktop review and this change would require significant field work. Furthermore, all landowners would need the opportunity to request a site visit by an ecologist, as it would only be fair to give them the chance to refine the assessment as it relates to their property (especially with the regulatory implications of the high category). This extra field work would take significant time and resources'. The Council considers additional time to resource this work should be given to Councils which already protect SNAs within their district plans (e.g. by enabling this to be done at the next District Plan review).

**Q14. The NPS-IB proposes SNAs are scheduled in a district plan. Which of the following council plans should include SNA schedules? Why?**

- a. regional policy statement
- b. regional plan
- c. district plan
- d. a combination.

1. A combination would provide for better collaboration and awareness across the different agencies.

**Q15. We have proposed a timeframe of five years for the identification and mapping of SNAs and six years for scheduling SNAs in a district plan. Is this reasonable? Yes/no? What do you think is a reasonable timeframe and why?**

1. No, it is not reasonable to require this timeframe for Council's (such as the Kāpiti Coast District Council) that have recently commenced or completed District Plan reviews which include the identification of SNAs (using a broadly consistent methodology with the criteria in Appendix 1), and included objectives, policies and rules to protect these areas. To ensure the costs of having to carry out this exercise again manageable, Councils should be able to rely on their existing provisions for SNA sites for 10 years from their operative district plan date.

**Q16. Do you agree with the proposed approach to identifying and managing taonga species and ecosystems? (see Part 3.14 of the proposed NPS-IB) Yes/no? Why/why not?**

1. Yes, in principle the Council agrees with the approach subject to additional resourcing being provided by central government to tangata whenua.

**Q17. Part 3.15 of the proposed NPS-IB requires regional councils and territorial authorities to work together to identify and manage highly mobile fauna outside of SNAs. Do you agree with this approach? Yes/no? Why/why not?**

1. No. The requirements for highly mobile fauna are unnecessarily onerous for the following reasons:
  - a) The survey of these species is a sound idea but will require significant resourcing under the current wording. The Council notes the wording is all-encompassing, and could include any trees (including private exotic gardens) where threatened species have rested or fed;
  - b) The collection and distribution of the information about the fauna is attached to ‘best practice methods’ for managing adverse effects on these species. A significant amount of guidance is required about what this will mean in practice. A national species management guide would potentially make this possible;
  - c) This policy could have the unintended consequence of discouraging landowners from planting some native species, or at least bird attracting species that might attract any at-risk or threatened species at all in their gardens.
  - d) The requirement for provisions (Objectives, Policies and Methods) for managing adverse effects for “highly mobile fauna areas” will be particularly problematic as the requirement implies an ability to identify and map areas, however in reality this could be anywhere and could change at any time.

**Q18. What specific information, support or resources would help you implement the provisions in this section (section B)?**

1. Apart from central government providing funding support to territorial authorities, a wide range of support for implementation is needed in the areas discussed below:
  - a) The Council requests consideration be given as to whether any of the implementation requirements in Part 3 of the NPS-IB can be incorporated into the NPS-IB policies, as this would allow Councils to use RMA section 55(2A) to update their district plans to more efficiently give effect to the NPS-IB.
  - b) Although the Council generally supports the right to appeal district plan provisions, the Council considers it is not appropriate to allow wide-ranging appeal rights on district plan provisions which are required to give effect to compulsory national policy statements. The Council requests consideration be given to providing clear, directive policies which demonstrate it is a requirement for all Councils in the country to give effect to the NPS-IB in their plans. It would also be beneficial if policies listed the types of plan provisions that will be required to give effect to the NPS-IB - such as restrictive rules and standards. This may help reduce the financial burden on Councils to give effect to a national instrument.
  - c) The Council notes the current wording of Clause 3.9 (1)(a) requires a number of adverse effects on SNAs to be avoided. The Council notes the existing resource management case law<sup>2</sup> on the use of the term avoid requires the Council to “not allow”, or to “prevent the occurrence of”. This current wording would require the use of non-complying or prohibited activity status for the effects identified in Clause 3.9 (1)(a). The Council notes some of the listed matters are very much open to interpretation as they

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<sup>2</sup> Supreme Court – *Environmental Defence Society Incorporated versus The New Zealand King Salmon Company Limited*, [2014], NZSC 38, at [96]; and High Court - *Environmental Defence Society v Otago RC* [2019] NZHC at [109].

are not defined, such as the extent of buffering. When applied to a typical scenario where an SNA is surrounded by exotic vegetation, gardens or weed species, the implications of the avoid direction may make the management of buffers very difficult under the existing wording. Therefore, the scenario described on page 53 of the discussion document is unlikely to play out as described. The Council recommends giving careful consideration to the legal meaning of avoid under resource management case law when considering the list of effects which are to be avoided, and the potential consequences.

- d) Should the list of effects which are to be avoided under Clause 3.9(1)(a) remain unaltered, the Council requests the addition of a 'no RMA section 85 proceedings' clause to ensure the Council is not faced with applications to the Environment Court under RMA s.85 on the grounds the district plan provisions will make land incapable of reasonable use. The Council considers it is inappropriate for an NPS to require the Councils to amend its district plan to avoid certain adverse effects, while exposing Councils to significant legal risk of being liable to pay compensation to landowners in doing so.
- e) The implications for infrastructure repair and upgrading for local authorities could be severe under the current wording of Clause 3.9 a). Figure 1 shows examples of the following types of existing undesignated KCDC infrastructure which pass through existing ecological sites/SNAs within the district:
- Green areas = ecological sites/SNAs
  - Red lines = waste water main
  - Solid green lines = storm water main
  - Dashed green lines = storm water open channel
  - Green dots = stormwater inlet/outlet
  - Blue lines = stream managed for stormwater purposes



Figure 1

If these sites are determined to be High value, the upgrading and repair of this infrastructure within these SNAs will likely be extremely difficult due to the proposed requirement to avoid the adverse effects listed in Clause 3.9(1).

The likely adverse effects that may result from the repair or replacement within the SNAs may include the clearance of indigenous vegetation along the length of, or portions of, the infrastructure to enable them to be removed and replaced. It is unclear how this activity would be provided for under Clause 3.12 – Existing activities in SNAs. This uncertainty arises from the length of time much of this infrastructure has been in

place (decades), and how much the SNA vegetation has matured since that time. Because of this time delay, the character, intensity and scale of the effects that would be likely to result from the repair or upgrading of this infrastructure would likely be greater than before the commencement date of the NPS-IB. This would mean these existing activities are not provided for under Clause 3.12 of the NPS-IB, and it therefore follows the activities would be subject to the avoidance requirement of Clause 3.9. The potential cost implications of this are significant (re-routing infrastructure).

- f) With regards to research the Council requests the Department of Conservation or the regional council be responsible for undertaking research into highly mobile species and their habitats, including the survey work required by Clause 3.15 to a level of detail appropriate to be used in District Plans.
- g) Guidance – many of the implementation requirements have phrases that are open to interpretation such as “buffers”, and “necessary to maintain indigenous biodiversity”. The Council considers it would be necessary to have terms such as this clarified. This clarification must be in the NPS itself to afford it legal weight through the RMA Schedule 1 and resource consent processes.
- h) Timeframes – remove some of the arbitrary timeframes in the NPS to make implementation less onerous for Councils that already protect ‘significant indigenous vegetation’ identified and protected in their district plan. The Council notes a two-year requirement to initiate a Schedule 1 process to include any newly identified sites extremely unrealistic. The Council also notes the 2-year timeframe is highly likely to overlap the appeal resolution period of the previous two-year review process.

**Q19. Do you think the proposed NPS-IB provides the appropriate level of protection of SNAs? Yes/no? Why/why not? (see Part 3.9 of the proposed NPS-IB)**

- 1. No, unless the interpretation issues and the short to medium term implementation issues identified in this submission are addressed.

**Q20. Do you agree with the use of the effects management hierarchy as proposed to address adverse effects on indigenous biodiversity instead of the outcomes-based approach recommended by the Biodiversity Collaborative Group? Yes/no? Why/why not?**

- 1. In principle the use of the effects hierarchy is supported but the directive verbs (e.g. *avoid*) in the wording have their meanings defined through RMA case law<sup>3</sup>, and the legal meaning of this word will make it difficult to use in most cases without rendering land incapable of reasonable use.

**Q21. Are there any other adverse effects that should be added to Part 1.7(4), to be considered within and outside SNAs? Please explain.**

- 1. The list appears to be comprehensive.

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<sup>3</sup> Supreme Court. *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*, [2014], NZSC 38, at [96]; and High Court - *Environmental Defence Society v Otago RC* [2019] NZHC at [109].

**Q22. Do you agree with the distinction between high and medium-value SNAs as the way to ensure SNAs are protected while providing for new activities? Yes/no/unclear? Please explain. If no, do you have an alternative suggestion?**

1. In principle yes, subject to the interpretation, implementation and legal issues identified in this submission being adequately addressed.

**Q23. Do you agree with the new activities the proposed NPS-IB provides for and the parameters within which they are provided for? (see Part 3.9(2)-(4) of the proposed NPS-IB) Yes/no? Why/why not?**

1. No. These activities should be provided for with the addition of other local authority infrastructure which does not benefit from a designation as discussed above.
2. The Council notes that the nationally significant infrastructure provided for under Clause 3.9(2) would capture recent examples such as the Transmission Gully Motorway and the MacKays to Peka Peka Expressway. Both these are Roads of National Significance which are highly likely to have adversely affected high value SNAs, and included habitat used by five threatened and at risk bird species<sup>4</sup>. The Council notes that under the current wording of Clause 3.9(1)(a), the consenting of projects such as these may be made considerably more difficult.

**Q24. Do you agree with the proposed definition for nationally significant infrastructure? Yes/no? Why/why not?**

1. No. The Council does not agree that this is the only infrastructure that should be provided for by the NPS-IB. The exclusion of local electricity distribution lines, local roads, water, wastewater and stormwater systems from this definition will mean that it will be very difficult to maintain infrastructure in parts of the Kāpiti Coast that is not provided for under a designation.

**Q25. Do you agree with the proposed approach to managing significant indigenous biodiversity within plantations forests, including that the specific management responses are dealt with in the NESPF? (see Part 3.10 of the proposed NPS-IB) Yes/no? Why/why not?**

1. The Council considers it is appropriate for the management of significant indigenous biodiversity to fall under the NESPF, unless there are good reasons for not doing so. The Council notes the current methods used in the Kāpiti Coast District for harvesting plantation forests does not appear to leave much indigenous biodiversity in its wake.
2. It is unclear under Clause 3.10 (3) how plantation forest biodiversity areas that contain threatened or at-risk flora are to have adverse effects from plantation forestry activities managed. Managed how? Managed to achieve what outcome?

**Q26. Do you agree with managing existing activities and land uses, including pastoral farming, proposed in Part 3.12 of the proposed NPS-IB? Yes/no? Why/why not?**

1. In principle this is a good idea and it makes sense for regional councils. However, the Council notes any new district plan provisions which are put in place as required by Clause 3.12(3) would not apply to any existing uses or activities which are being carried out under

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<sup>4</sup> <https://www.nzta.govt.nz/assets/projects/transmission-gully-application/docs/aee-full-report.pdf> at page [366].

section 10. This raises the question – what existing activities (apart from farming) are being targeted from a territorial local authority perspective?

2. The Council also reiterates the issues raised under question 18 with regard to existing infrastructure which does not benefit from a designation.

**Q27. Does the proposed NPS-IB provide the appropriate level of protection for indigenous biodiversity outside SNAs with enough flexibility to allow other community outcomes to be met? Yes/no? Why/why not?**

1. Maybe, this will depend on the specific rules for use and development that are “necessary to maintain indigenous biodiversity”. There is no certainty about what this will look like and how much it will vary from plan to plan.

**Q28. Do you think it is appropriate to consider both biodiversity offsets and biodiversity compensation (instead of considering them sequentially) for managing adverse effects on indigenous biodiversity outside of SNAs? Yes/no? Why/why not?**

1. Where significant adverse effects on indigenous biodiversity are proposed the Council prefers biodiversity offsetting to be the preferable starting position due to the ‘no net loss and preferably a net gain’ requirement. This appears to offer the most opportunity to mitigate the proposed loss of indigenous biodiversity compared to biodiversity compensation.

**Q29. Do you think the proposed NPS-IB adequately provides for the development of Māori land? Yes/no? Why/why not?**

1. The Council notes this is a question best answered by tangata whenua. It is noted however that there is a lack of any specific recognition for Māori land development in the objectives and policies. Therefore, it appears the NPS-IB does not give any specific provision for this apart from a small number of references in the implementation requirements. It is also noted that in many districts Māori-owned land still retains much indigenous biodiversity, and therefore the NPS-IB implementation may disproportionately affect Māori-owned land.

**Q30 Part 3.5 of the proposed NPS-IB requires territorial authorities and regional councils to promote the resilience of indigenous biodiversity to climate change. Do you agree with this provision? Yes/no? Why/why not?**

1. Yes, the resilience of indigenous biodiversity to the effects of climate change is an important element in achieving Objective 1 of the NPS-IB. However, there is a need to make a stronger link with this aim to delivery mechanisms – such as Clauses 3.16 – Restoration and enhancement, 3.17 – Increasing indigenous vegetation cover, and Appendices 3 & 4 with respect to biodiversity offsetting and compensation.

**Q31 Do you think the inclusion of the precautionary approach in the proposed NPS-IB is appropriate? (see Part 3.6 of the proposed NPS-IB) Yes/no? Why/why not?**

1. Yes, the inclusion of the precautionary approach in the NPS-IB is useful for consenting processes as it sets a clear expectation of the approach to be adopted by decision makers in the absence of sufficient information where the effects on indigenous biodiversity are potentially significantly adverse.

**Q32. What is your preferred option for managing geothermal ecosystems? Please explain.**

- a. Option 1**
- b. Option 2**
- c. Option 3**
- d. Or your alternative option – please provide details.**

1. No comment.

**Q33. We consider geothermal ecosystems to include geothermally influenced habitat, thermo-tolerant fauna (including microorganisms) and associated indigenous biodiversity. Do you agree? Yes/no? Why/why not?**

1. No comment.

**Q34. Do you agree with the framework for biodiversity offsets set out in Appendix 3? Yes/no? Why/why not?**

1. Yes, in principle it appears comprehensive and appropriate.

**Q35. Do you agree with the framework for biodiversity compensation set out in Appendix 4? Yes/no? Why/why not? Include an explanation if you consider the limits on the use of biodiversity compensation set out in Environment Court Decision: *Oceana Gold (New Zealand) Limited v Otago Regional Council* as a better alternative.**

1. No, the Council prefers the approach set out in *Oceana Gold (New Zealand) Limited v Otago Regional Council*, as it sets demonstrable bottom-lines to avoid specifically identified significant adverse effects on biodiversity<sup>5</sup>.

**Q36. What level of residual adverse effect do you think biodiversity offsets and biodiversity compensation should apply to?**

- a. More than minor residual adverse effects**
- b. All residual adverse effects**
- c. Other. Please explain.**

1. Council notes biodiversity offsets and compensation would need to be applied to all residual effects if Objective 1 of the NPS-IB is to be met (to maintain indigenous biodiversity). However, the Council considers such an approach would not be appropriate for all residual adverse effects, and therefore considers biodiversity offsetting and compensation (in this sequence) should apply to more than minor residual adverse effects only.

**Q37. What specific information, support or resources would help you implement the provisions in this section (section C)?**

1. Resource requirements are outlined at question 18.

**Q38. The proposed NPS-IB promotes the restoration and enhancement of three priority areas: degraded SNAs; areas that provide important connectivity or buffering functions; and**

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<sup>5</sup> At page [3] : <https://www.environmentcourt.govt.nz/assets/Documents/Publications/2019-NZEnvC-041-Oceana-Gold-New-Zealand-Limited-v-Otago-Regional-Council.pdf>

**wetlands. (see Part 3.16 of the proposed NPS-IB) Do you agree with these priorities? Yes/no? Why/why not?**

1. No, unless the interpretation and implementation issues associated with buffer areas identified in question 18 are addressed and clarified in the NPS-IB.

**Q39. Do you see any challenges in wetland protection and management being driven through the Government's Action for healthy waterways package while wetland restoration occurs through the NPS-IB? Please explain.**

1. The Council notes there are always potential challenges where different pieces of national direction cross paths over the same issue, and where it is not clear within the national direction how the two pieces of national direction work together.

**Q40. Part 3.17 of the proposed NPS-IB requires regional councils to establish a 10 per cent target for urban indigenous vegetation cover and separate indigenous vegetation targets for non-urban areas. Do you agree with this approach? Yes/no? Why/why not?**

1. No, not in its current form. The Council requests the 'methods' required to be included in regional policy statements and plans is clarified so it is clear the methods cannot include devolving this responsibility to rules and standards within district plans. The current wording would enable regional councils to effectively pass the onus onto territorial local authorities to meet the regional council's targets under Clause 3.17. This would also pass on the costs arising from the Schedule 1 and appeals processes to territorial authorities.

**Q41. Do you think regional biodiversity strategies should be required under the proposed NPS-IB, or promoted under the New Zealand Biodiversity Strategy? Please explain.**

1. The inclusion of a biodiversity strategy as an NPS requirement creates uncertainty, especially as provisions in district or regional plans will be in the process of being developed.
2. It is also unclear what recourse territorial authorities would have should they object to the content of a biodiversity strategy, particularly with respect to:
  - a. Clause 3 b) ii) - which specifies (emphasis added) the *actions that will be undertaken by local authorities or central government*; and
  - b. Clause 3 b) d) – which requires the specification of *measures to be taken if milestones are not being met*.

It is unclear what these actions and measures would be, and what their associated costs to territorial authorities would be. The Council request the requirement for a biodiversity strategy is changed to a requirement for a biodiversity regional plan. Such an approach would appear to fit within the remit of RMA section 63(1). This would enable territorial authorities to have greater ability via the Schedule 1 process to influence the content of the document in the event the proposed actions and measures result in significant and unreasonable costs to territorial authorities.

**Q42. Do you agree with the proposed principles for regional biodiversity strategies set out in Appendix 5 of the proposed NPS-IB? Yes/no? Why/why not?**

1. Yes, but there should be additional requirements for inclusion of pest plant and animal control provisions to protect and enhance biodiversity, and integration of these provisions with Regional Pest Management Strategies.

**Q43. Do you think the proposed regional biodiversity strategy has a role in promoting other outcomes (eg, predator control or preventing the spread of pests and pathogens)? Please explain.**

1. No comment.

**Q44. Do you agree with the timeframes for initiating and completing the development of a regional biodiversity strategy? (see Part 3.18 of the proposed NPS-IB) Yes/no? Why/why not?**

1. The completion in 6 years will be too late for use in relation to the SNA plan change required of local authorities, however a shorter timeframe would likely result in a poorly conceived strategy which would not be helpful.

**Q45. What specific information, support or resources would help you implement the provisions in this section (section D)?**

1. Response above for Question 18.

**Q46. Do you agree with the requirement for regional councils to develop a monitoring plan for indigenous biodiversity in its region and each of its districts, including requirements for what this monitoring plan should contain? (see Part 3.20) Yes/no? Why/why not?**

1. Yes. Monitoring is required to inform effective biodiversity management, and to ultimately determine whether plan provisions and resource consent decisions are achieving the NPS-IB objectives. Many regional councils are already doing this.

**Q47. Part 4.1 requires the Ministry for the Environment to undertake an effectiveness review of the proposed NPS-IB. Do you agree with the requirements of this effectiveness review? Yes/no? Why/why not?**

1. Yes. A ten-year review of plan provisions, resource consents, designations and other decision-making appears to be a realistic timeframe for monitoring the effectiveness of the NPS-IB provisions in achieving its objectives.

**Q48. Do you agree with the proposed additional information requirements within Assessments of Environment Effects (AEEs) for activities that impact indigenous biodiversity? (see Part 3.19 of the proposed NPS-IB). Yes/no? Why/why not?**

1. Yes, on the proviso the issues identified above with regard to the interpretation and implementation issues that are likely to arise from the current use of the term *buffer*, and the issues associated with the identification of highly mobile fauna are addressed.
2. The Council requests the ability to insert the requirements of Clause 3.19 into district plans without formality (no Schedule 1 process). There is no benefit to the community (costs, resourcing, time) if Councils have to use the formal plan change process to insert mandatory information requirements into their district plans. In any case the Council notes there does not appear to be any opportunity to change the Clause 3.19 requirements in response to any submissions made on a plan change process to insert them, effectively rendering the Schedule 1 process an unnecessary expense.

- Q49. Which option for implementation of the proposed NPS-IB do you prefer? Please explain.**
- a. Implementation as soon as reasonably practicable – SNAs identified and mapped in five years, scheduled and notified in plans in six years.**
  - b. Progressive implementation programme – SNAs identified and mapped within seven years, scheduled and notified in plans in eight years.**

1. Neither are appropriate for districts, such as Kāpiti Coast, that have recently identified and protected biodiversity in their District Plans. A 10-year timeframe (from operative date of the current biodiversity provisions would be more appropriate for many councils. The timeframes suggested in the NPS would appear appropriate for Councils that do not currently protect SNAs.

- Q50. Do you agree with the implementation timeframes in the proposed NPS-IB, including the proposed requirement to refresh SNA schedules in plans every two years? Yes/no? Why/why not?**

1. No the refresh timeframe is too short. It typically takes 18 months for a plan change to be generated and completed (from initial consultation to decision) if it is not appealed. This 2-year requirement would mean that updating SNAs would be a constant task for District Planning teams if any are identified via other methods (resource consents, notices of requirement etc).

- Q51. Which of the three options to identify and map SNAs on public conservation land do you prefer? Please explain.**

- a. Territorial authorities identify and map all SNAs including public conservation land**
- b. Public conservation land deemed as SNAs**
- c. No SNAs identified on public conservation land**

1. The Kāpiti Coast District Council has prepared this response assuming Option A is what the NPS-IB proposes. However, Option B would be an efficient option for other Councils or alternatively for the Department of Conservation to undertake the assessments for their own land and provide these to the relevant Council.
2. The Council does not support Option C as public conservation land which is managed under an established conservation management strategy, conservation management plan or management plan under the Conservation Act is already excluded from having to comply with the NPS-IB<sup>6</sup>. The Council considers all other public conservation land needs to fall under the RMA and be subject to district plan rules.

- Q52. Other option. What do you think of the approach for identifying and mapping SNAs on other public land that is not public conservation land?**

1. The Kāpiti Coast District Council has undertaken an SNA assessment for all public land. Significant parts of the Council, NZTA and Regional Council's landholdings have been identified as SNAs (regardless of ownership, designations, resource consents & existing uses). It is appropriate that all areas that meet SNA criteria are identified as SNAs are independent of land ownership.

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<sup>6</sup> RMA Section 4(3).

**Q53 Part 3.4 requires local authorities to manage indigenous biodiversity and the effects on it of subdivision, use and development, in an integrated way. Do you agree with this provision? Yes/no? Why/why not?**

1. In principle this is supported. The effects of a subdivision or development may occur on indigenous biodiversity at a distance from the development site (for example downstream or on a nearby property not involved in the subdivision or development) so integrated management is appropriate and necessary.
2. The Council notes buffer areas and areas important for connectivity between SNAs may be present on land which does not contain an SNA. This highlights the importance of taking an integrated approach if the NPS-IB objectives are to be achieved.
3. This creates a potential conflict with land supply for housing and meeting the NPS-UD, as this could create a potential restriction.

**Q54. If the proposed NPS-IB is implemented, then two pieces of national direction – the NZCPS and NPS-IB – would apply in the landward-coastal environment. Part 1.6 of the proposed NPS-IB states if there is a conflict between these instruments the NZCPS prevails. Do you think the proposals in the NPS-IB are clear enough for regional councils and territorial authorities to adequately identify and protect SNAs in the landward-coastal environment? Yes/no? Why/why not?**

1. Yes. This is clear, however the relationship between the NPS-IB and other pieces of national direction is not. The Council requests the NPS-IB includes a clear hierarchy which shows how it relates to other pieces of national direction.

**Q55. The indicative costs and benefits of the proposed NPS-IB for landowners, tangata whenua, councils, stakeholders, and central government are set out in Section 32 Report and Cost Benefit Analysis. Do you think these costs and benefits are accurate? Please explain, and please provide examples of costs/benefits if these proposals will affect you or your work.**

1. The plan change costs, implementation costs and the costs arising from unintended consequences are likely to be significantly greater than the \$71-247,000 indicated in the Section 32 analysis.
2. KCDC’s experience in the process of including SNAs in its proposed district plan shows that the upper estimate of \$247,000 would not get close to covering the costs of completing a SNA plan change.
3. The Council notes the cost estimates in the section 32 do not include the costs of having to meet the requirements of section 76(4D) – (4D) with respect to the identification and protection of trees within SNAs which also happen to be within an *urban environment allotment*<sup>7</sup>. The costs to KCDC to comply with section 76(4D) – (4D) (Variation 1 to the Proposed District Plan) was in excess of \$231,000 in planning and ecological advice alone. There are many other costs not included in this figure such as hearings commissioners and administration (draft and formal schedule 1 consultation requirements).
4. KCDC breakdown of SNA mapping and proposed district plan process based on recent SNA and tree/biodiversity protection RMA Schedule 1 processes:

Process	Cost estimate
Ecological and planning advice underpinning the identification, mapping, classification and listing of the	\$280,000

<sup>7</sup> RMA section 76 (4B): <http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM233685.html>

SNAs within the KCDC proposed district plan, complying with RMA section 76(4A) – (4D) including advice during the hearing and ecological advice on appeals	
Hearing (4.5 days, 3x independent hearing commissioners, 2 x councillor commissioners) and decision writing costs	\$30,000
Legal costs to resolve appeals (at \$300 - \$400 per hour) – these are the legal costs incurred by KCDC to resolve PDP appeals on biodiversity matters	\$100,000 (@ \$230 - \$460 per hour)
<b>Total</b>	<b>\$410,000</b>

5. The cost implications of implementing the NPS-IB are difficult to quantify but may be significant under the current wording of Clause 3.9 if the identification of ‘high’ value SNAs results in land being incapable of reasonable use. Under these circumstances Councils are likely to be liable to having to pay affected property owners financial compensation under RMA Section 85<sup>8</sup>. These potential liability costs have not been calculated.
6. The (presumably) unintended costs to Councils in relation to the maintenance and upgrading of infrastructure which may be within, or pass through SNAs have been vastly underestimated. Councils generally have a lot of infrastructure that is not provided for under a designation (e.g. wastewater, stormwater and water supply pipes). Under the current wording of Clause 3.9, it may be necessary for Councils to reroute important infrastructure to avoid SNAs rather than upgrade them. The costs of rerouting such infrastructure can run into the millions of dollars.
7. The estimated cost is a significant sum. The opportunity cost is that the money could have been spent on on-the-ground activities. It may be better spend working with land-owners directly on maintaining and enhancing indigenous biodiversity (e.g. trapping, fencing and planting) around the country.

**Q56. Do you think the proposed NPS-IB should include a provision on use of transferable development rights? Yes/no? Why/why not?**

1. No. The Council considers there are better tools available to incentivise restoration and enhancement of biodiversity. The Council also considers the long-term outcomes of transferable development rights with respect to achieving the other objectives of a district plan (such as retaining productive rural land) are untested. The council also considers the recording and monitoring systems that would be required to keep a record of which development rights have been purchased from which land would be a burden on local authorities, particularly over a long time period.

**Q57. What specific information, support or resources would help you implement the provisions in this section (section E)?**

1. It is not necessary to require the inclusion of any of the content of Clause 3.19 into plans. The Council notes all applicants for resource consent are already required to include an assessment of the activity against any relevant NPS under Schedule 4 Clause 2 (1)(g).
2. If the NPS-IB insists the content of Clause 3.19 is inserted into plans the Council requests this all be provided for under Section 55(2A) of the RMA. There is no benefit in requiring

<sup>8</sup> RMA section 85: <http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM233831.html>

local authorities to insert specific content into their plans but at the same time requiring local authorities to use the formal Schedule 1 process.

**Q58. What support in general would you require to implement the proposed NPS-IB? Please detail.**

- a. Guidance material**
- b. Technical expertise**
- c. Scientific expertise**
- d. Financial support**
- e. All of above.**
- f. Other (please provide details).**

1. All of the above, plus the response to Question 18.

**Q59. Do you think a planning standard is needed to support the consistent implementation of some proposals in the proposed NPS-IB? Yes/no? If yes, what specific provisions do you consider are effectively delivered through a planning standard tool?**

1. Yes, a regulation is needed to enable Councils to withdraw any conflicting provisions or make consequential amendments without formality to their plans. This could be a planning standard or an NES. The Council also requests consideration be given as to whether any other requirements in the NPS-IB could be incorporated into district plans without formality.

**Q60. Do you think there are potential areas of tension or confusion between the proposed NPS-IB and other national direction? Yes/no? Why/why not?**

1. Yes, with no hierarchies specified in national direction/proposed national direction there will be areas of tension and potential areas of confusion between them unless clarity is provided. For example:
  - a. would the absolute verbs used in the NPS-IB (to avoid) take precedence over the directive nature of the proposed NPS-UD to provide for additional land for housing?
  - b. how would the 10% urban target of increased biodiversity under the NPS-IB fit with the intensification direction under the proposed NPS-UD?
  - c. what status would buffers around SNAs and areas which provide connectivity between SNAs have under the proposed NPS-UD if they happen to be on land identified for future urban development?
2. The Council request that all emerging national direction clearly specifies how it relates to other national direction to enable easier implementation without having to rely on the courts to provide direction. With the emergence of more national direction than ever before it is even more necessary to ensure the relationships between them is clear.
3. As currently written, it does not seem possible to achieve all national direction and proposed national direction without there being trade-offs between them, even though trade-offs are not written into any of them. For example, land adjacent to an existing town is generally the best place to provide for additional housing capacity but this will require additional water resources (less for the river), and may result in some loss of productive land. If the land is less productive it may have indigenous vegetation or provide habitat for indigenous fauna. The development of such land is likely to be contrary to the NPS-IB. If intensification of the existing urban area is preferred to provide housing capacity in order

to avoid fragmenting highly productive land, the 10% urban biodiversity target in the NPS-IB will be unlikely to be met.

4. Collectively the suite of national policy statements is putting councils in an expensive lose-lose situation without sufficient direction on how to prioritise between different NPS.

**Q61. Do you think it is useful for RMA plans to address activities that exacerbate the spread of pests and diseases threatening biodiversity, in conjunction with appropriate national or regional pest plan rules under the Biosecurity Act 1993? Yes/no? Why/why not?**

1. Not for territorial local authorities as this will require a different skill set. It may be appropriate for Regional Councils.

K Gurunathan JP, MA  
**MAYOR, KĀPITI COAST DISTRICT**