



HUTT CITY COUNCIL

KOMITI KAUPAPA TAIAO
CLIMATE CHANGE AND SUSTAINABILITY COMMITTEE

Meeting to be held in the Council Chambers, 2nd Floor, 30 Laings Road, Lower Hutt on
Thursday 14 July 2022 commencing at 2.00pm.

SUPPLEMENTARY ORDER PAPER

PUBLIC BUSINESS

7. **SUBMISSION ON THE NATIONAL POLICY STATEMENT FOR INDIGENOUS**
BIODIVERSITY EXPOSURE DRAFT (22/1737)

Report No. CCASC2022/3/149 by the Policy Planning Manager

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Judy Randall
DEMOCRACY ADVISOR

07 July 2022

File: (22/1737)

Report no: CCASC2022/3/149

Submission on the National Policy Statement for Indigenous Biodiversity Exposure Draft

Purpose of Report

1. This report considers a submission to Government's Exposure Draft of the National Policy Statement for Indigenous Biodiversity (draft NPS-IB).

Recommendations

That the Committee:

- (1) receives the report;
- (2) approves the submission on the National Policy Statement for Indigenous Biodiversity Exposure Draft, as attached as Appendix 1 to the report;
- (3) agrees to delegate authority to the Chair and Deputy Chair of the Climate Change and Sustainability Committee, and the Chief Executive to finalise the submission, consistent with discussions and any amendments made by the Committee; and
- (4) notes that the Climate Change and Sustainability Committee has performed the responsibilities of the Policy, Finance and Strategy Committee in accordance with its Terms of Reference so that the matter can be considered in a timely manner.

For the reason that the submission represents Council's view on the draft National Policy Statement for Indigenous Biodiversity.

Background

2. The Ministry for the Environment (MfE) released the National Policy Statement for Indigenous Biodiversity (NPS-IB) exposure draft for consultation on 9 June 2022. Submissions close on 21 July 2022. The draft NPS-IB is available online at the following link:

<https://environment.govt.nz/assets/publications/NPSIB-exposure-draft.pdf>

3. National Policy Statements (NPS) are prepared by Central Government under the Resource Management Act 1991. A NPS may be prepared at any time on any resource management issue that has national significance. NPSs provide policy direction to local authorities about that issue.
4. Council is required to 'give effect' to any relevant NPS through the District Plan. This means the District Plan must be changed to ensure the direction of the NPS is implemented in the objectives, policies and rules of the plan and through the resource consent process.

This is the second round of consultation on a draft NPS-IB

5. The NPS-IB follows on from the work of The Biodiversity Collaborative Group (the Group), a stakeholder-led group funded by the Ministry for the Environment to develop national-level policy for indigenous biodiversity in New Zealand. The Group worked to develop a recommended draft NPS and reported to Government in October 2018. That draft NPS was consulted on in late 2019/early 2020.
6. Council made a submission on the previous draft NPS-IB in March 2020. That submission provided general support for the protection of indigenous biodiversity and the aims of the policy statement, but raised a number of concerns relating to its implementation, unnecessary regulation, and additional costs associated with the draft NPS-IB. The submission was approved by the Policy, Finance and Strategy Committee on 3 March 2020 (see [agenda](#) and [minutes](#)).
7. The current consultation is targeted towards councils, iwi, experts and other stakeholders to ensure the provisions are workable. This version is supported by [a draft Implementation Plan](#).

Council decided in 2018 not to include SNAs in the District Plan

8. This decision would not give effect to the directives under the NPS-IB. Once the NPS-IB is in place (expected by the end of 2022), Council will need to give effect to it. This is likely to be through the full review of the District Plan.

The aim of the NPS-IB is to resolve uncertainty and under-valuing of indigenous biodiversity under the Resource Management Act 1991.

9. The draft NPS-IB sets out an objective and supporting policies to identify, protect, manage and restore indigenous biodiversity under the Resource Management Act 1991 (RMA) and specifies what local authorities must do to achieve the objective.
10. The overarching objective of the draft NPS-IB is:

To protect, maintain, and restore indigenous biodiversity in a way that:

- (a) *Recognises tangata whenua as kaitiaki, and people and communities as stewards, of indigenous biodiversity; and*
- (b) *Provides for the social, economic and cultural wellbeing of people and communities, now and into the future.*

11. The remainder of this section provides a brief overview of the key requirements within the draft NPS-IB to achieve the overarching objective.

The draft NPS-IB places greater emphasis on engaging with the community and Tangata Whenua.

12. The underlying concept of the draft NPS-IB is 'Te Rito o te Harakeke' which refers to the need to maintain the integrity of indigenous biodiversity. It recognises the intrinsic value and mauri of indigenous biodiversity as well as people's connections and relationships with it.
13. Council will be required to **engage with communities and tangata whenua** to determine how to give effect to Te Rito o te Harakeke.
14. In addition to this engagement, Council must also **actively involve tangata whenua** (to the extent they wish to be involved) in the management of indigenous biodiversity. This engagement must be early and meaningful.
15. The draft NPS-IB also directs Council to work with tangata whenua to:
- a. investigate how tangata whenua could be involved in the management of, and decision-making about, indigenous biodiversity; and
 - b. identify indigenous species, populations, and ecosystems in the district that are taonga and, if tangata whenua agree, identifying these taonga in the district plan along with appropriate plan provisions to protect these taonga.

Council will need to assess, identify, and protect significant natural areas (SNAs)

16. The NPS-IB will require Council to undertake **an assessment of the district to identify 'significant natural areas' ('SNAs')**. SNAs are areas of indigenous vegetation or habitats of indigenous fauna that meet specified ecological criteria set out in the draft NPS-IB. The criteria must be applied consistently regardless of who owns the land.
17. The assessment process must include engagement with tangata whenua and affected landowners as well as site visits to verify the information about the SNA (with permission of the landowner).
18. Once the assessment has been undertaken, **Council will be required to include SNAs in the District Plan via a plan change within five years of the NPS-IB coming into effect**. This includes supporting objectives, policies and rules to protect SNAs and manage the effects of land use, development and subdivision on those SNAs.

19. While Council has previously undertaken an assessment of potential SNAs through the 2018 draft plan change process, that assessment will need to be reviewed and updated to align with the new requirements of the NPS-IB.
20. In most cases, adverse effects on SNAs must be 'avoided'. This is a very strong policy direction within the context of the RMA. There are some exceptions, including SNAs on Māori land, infrastructure provision, and the construction of a house on a site that existed prior to the NPS-IB taking effect.
21. The draft NPS-IB provides for alternative approaches to managing the effects of these specific activities on SNAs.

Indigenous biodiversity outside of SNAs must also be maintained via rules in the District Plan

22. The draft NPS-IB also requires that district plans include controls to **maintain indigenous biodiversity outside of identified SNAs**.
23. In these circumstances, where an activity is proposed that affects an area of indigenous biodiversity, the 'effects management hierarchy' must be applied to any adverse effects that are irreversible, rather than the 'avoid' requirement that applies to SNAs. While this is a slightly less onerous consenting pathway, it will likely require resource consents to be sought where this is not currently the case.

The District Plan will need to promote the restoration of indigenous biodiversity

24. In addition to maintaining established indigenous biodiversity, the draft NPS-IB will also require that the District Plan includes provisions to promote the **restoration** of indigenous biodiversity.
25. The draft NPS-IB specifies a number of circumstances where restoration must be prioritised in district plans. This includes SNAs whose ecological integrity is degraded and threatened and rare ecosystems representative of naturally occurring and formerly present ecosystems.

Regional Councils will also have obligations under the NPS-IB

26. The regional council will also be required to give effect to the NPS-IB. This includes:
 - a. Changing the **Regional Policy Statement** and any relevant regional plans to give effect to the NPS-IB;
 - b. Recording areas outside of SNAs that are highly mobile fauna areas
 - c. Setting targets for the **percentage of indigenous vegetation cover in both urban and non-urban environments** in the Regional Policy Statement
 - d. Preparation of a **regional biodiversity strategy**, which Council will need to have regard to when developing District Plan policy;

- e. Preparation of a **monitoring plan** for indigenous biodiversity in the region.

There are set timeframes for implementing different parts of the NPS-IB

- 27. It is expected that the NPS-IB will be finalised and come into effect by the end of 2022. From that point, Council will be required to:
 - a. Change the District Plan to include SNAs **within five years** of the NPS-IB coming into effect; and
 - b. Make other changes to the District Plan to give effect to the remaining requirements of the NPS-IB **within eight years** of the NPS-IB coming into effect.
- 28. Assuming that the NPS-IB is finalised by the end of 2022, Officers anticipate that these requirements will be implemented through the District Plan review process, scheduled for late 2023/early 2024.

An Implementation Plan with incentives and funding is proposed

- 29. Alongside the draft NPS-IB, Central Government is also proposing a **support package for implementation**. This includes \$19 million that will cover training and support for iwi/Māori, financial support for Councils for SNA identification, and support for landowners (to supplement existing Council funds). There is also provision for a regional biodiversity coordinator to support communities to achieve their biodiversity goals.
- 30. There are also non-financial support measures proposed, including:
 - a. Guidance and best practice material to support implementation of the NPS-IB;
 - b. Communications support from the Ministry for the Environment to ensure consistent messaging for those affected by the NPS-IB;
 - c. A digital platform to provide resources for landowners with an SNA.

Discussion

- 31. Council has previously submitted on an earlier draft of the NPS-IB and provided general support for the overarching purpose and objective of this national direction. However, Council highlighted at the time that there were significant cost implications associated with the implementation of the draft NPS-IB due to the requirements that it would impose.
- 32. Some changes have been made as a result of feedback on the earlier draft NPS-IB. Of relevance to Council are the following changes:
 - a. The removal of the requirement to classify SNAs into 'high' and 'medium' categories;
 - b. The provision for a single dwelling on a site that was established prior to the NPS-IB coming into effect.

33. While these changes are positive, officers consider there remain a number of matters that should be addressed before the NPS-IB is finalised. Following a briefing with Councillors, a draft submission has been prepared for the Committee's consideration. The draft submission is provided as **Appendix 1** to the report.
34. The draft submission focuses on potential implementation issues and costs associated with the draft NPS-IB including:
- a. The requirement for territorial authorities to map SNAs, when it is regional councils who have the expertise and already collect information about indigenous biodiversity as part of their functions under the Resource Management Act. If regional councils were responsible for mapping SNAs, this would remove a perceived conflict of interest for territorial authorities in both determining which areas are SNAs and regulating development within those SNAs.
 - b. The requirement to map SNAs according to their ecological boundaries, rather than adjusting to align with property boundaries. This could result in many additional properties being affected by SNA requirements when in fact only a very small portion of the property is covered by a SNA. There will be significant additional engagement costs associated with this as well as increased debate about the exact location of SNA boundaries.
 - c. The inefficiencies associated with adding SNAs that are identified through, for example, a resource consent process 'to the next plan change'. This could result in piecemeal plan changes or create unnecessary controversy on a plan change that bears no relevance to SNAs.
 - d. The inability to undertake reasonable works within an SNA including:
 - i. the removal of vegetation in close proximity to a dwelling where this is necessary for safety reasons, or reasonable use of the dwelling.
 - ii. Maintenance of existing open areas, tracks, accessways, fences or on-site services on reserve land that is not Crown-owned.
 - iii. The removal of vegetation and associated ongoing maintenance to provide new public tracks and amenities on reserve land.
 - iv. The removal of vegetation for the purpose of biodiversity management on reserve land (such as the construction of predator-proof fencing).
 - e. The policy direction to 'avoid' adverse effects on SNAs in the first instance, which will result in very challenging and costly resource consent processes for reasonable activities.
 - f. The requirement to include District Plan rules to maintain indigenous biodiversity outside of areas that are defined as SNAs. The NPS-IB does

not provide clarity about the scale at which these requirements would apply.

- g. Concerns about the implementation support package, in particular whether sufficient support is provided for tangata whenua to engage in the process.

Options

35. The Committee has the following options:

- a. Approve the submission (in Appendix 1 to the report) with or without amendments;
- b. Do not approve the submission and either:
 - i. Prepare/provide direction for a new submission; or
 - ii. Not make a submission.

Climate Change Impact and Considerations

36. The matters addressed in this report have been considered in accordance with the process set out in Council's Climate Change Considerations Guide.

Consultation

- 37. Consultation with the community has not been undertaken on this submission. However, once the NPS-IB comes into effect, Council will be required to commence engagement with tangata whenua, landowners and the wider community.
- 38. Officers have liaised with other councils in the region in preparing this submission. There is general consistency across the region about the key areas of concern.

Legal Considerations

39. There are no legal risks associated with this submission. However, once the NPS-IB comes into effect, Council will be under a legal obligation to give effect to it.

Financial Considerations

- 40. There are no financial considerations associated with this submission. However, we do know there are likely to be significant costs associated with implementing the requirements of the NPS-IB, including undertaking the necessary engagement and consultation, and commissioning ecological expertise to undertake the assessment of potential SNAs.
- 41. However, until the Government finalises the NPS-IB later this year, there remains uncertainty as to its exact requirements and hence the financial implications of the associated work.
- 42. Whilst there is District Plan budget allocated to SNA work (under previous Governmental requirements), this budget will clearly need to be reviewed once the final NPS-IB is released and either increased, or the District Plan

work programme re-prioritised. The financial implications will be reviewed through the preparation of 2022/23 Annual Plan.

Appendices

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1	Appendix 1: Draft submission on National Policy Statement for Indigenous Biodiversity	10

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Attention: Submissions Analysis Team

Tēnā koutou,

National Policy Statement for Indigenous Biodiversity – Feedback from Hutt City Council

Thank you for the opportunity to provide feedback on the Exposure Draft for the National Policy Statement for Indigenous Biodiversity ('draft NPS-IB').

Council has previously submitted feedback on the draft NPS-IB in March 2020. Our position remains supportive of the main objectives, including:

- maintaining indigenous biodiversity,
- providing direction on the identification and protection of significant areas of indigenous vegetation and habitats of indigenous fauna,
- the collaborative approach of working with Tangata Whenua and landowners

The draft NPS-IB has incorporated changes from the initial feedback on the earlier draft. We are pleased to see the changes in response to these submissions, notably:

- the removal of separate high and medium SNA classifications,
- clarification that regional councils are to map specified highly mobile fauna areas
- adding further exceptions to requirements about managing adverse effects on SNAs.

Significant issues still remain in the draft NPS-IB which we are eager to address. Our previous submission noted that there will be considerable responsibility and cost that will be associated with the implementation. This issue is still present in the draft NPS-IB, and we reiterate in our submission that further clarification and guidance be made available about the implementation of the NPS-IB.

We are also concerned by the long delay following the first Draft NPS-IB released in November 2019 and the continually shifting deadlines since then. The Ministry has not provided clear communication on the NPS-IB over the last two years. After this significant delay, the timeframe for providing feedback on this draft NPS-IB has been extremely tight and we are particularly concerned that those who may be most affected by the NPS-IB, which covers matters that have been contentious for Council and residents of Lower Hutt, will have had insufficient time to understand it and provide meaningful feedback. Following years of delays, the six week period for submissions, particularly during a time when council's resources are already stretched by requirements set by the

Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, does not enable us to sufficiently represent the views of our community.

We have identified specific opportunities for improvement to the draft NPS-IB below, and would be happy to discuss any aspect of our submission prior to the NPS-IB being finalised.

1. Mapping of Significant Natural Areas should be the responsibility of Regional Councils

Sections 3.8 and 3.9 of the draft NPS-IB require territorial authorities to identify and map Significant Natural Areas in their district plans. In our submission on the previous draft NPS-IB, Council's position was that this work should be undertaken by regional authorities rather than territorial authorities. Regional councils have the relevant expertise and already collect information and monitor indigenous biodiversity as a function under Sections 30 and 35 of the RMA. It would be effective and efficient for regional councils to therefore be responsible for mapping SNAs. This amendment would also eliminate the perceived conflict of interest for territorial authorities of regulating development on significant natural areas that they themselves have determined as such.

2. A more pragmatic approach to mapping Significant Natural Areas is required

The draft NPS-IB does not provide for a pragmatic approach to mapping Significant Natural Areas (SNAs) in a way that aligns with property boundaries. The current process for mapping entire SNAs has the potential to cross multiple properties, which will result in some provisions applying only to small sections of land over property boundaries.

While we support the intent of this approach and understand the need to maintain continuity of the SNA, the practicalities of including such small areas of SNA can result in significantly more properties being affected, needing to be notified and engaged in any process to protect the SNA. There are significant additional engagement, resourcing and compliance costs for councils associated with this. We also expect this may lead to an increase in submissions and debate regarding the exact location of SNA boundaries, which can often be subjective.

We suggest that the NPS-IB includes the provision for adjustment of SNA boundaries in circumstances where a very small portion of the SNA falls within a property.

3. Adding SNAs to the 'next plan change' (Section 3.8 (5))

This section of the draft NPS-IB requires territorial authorities to include any SNAs identified through a resource consent, notice of requirement, or other means to be included in 'the next plan change'. We are concerned about how this direction is intended to be implemented. It would be inefficient and illogical to include these changes as an 'add on' to another plan change that has no relevance to the SNA itself. This may result in proposed plan changes that are disjointed or create unnecessary controversy about what may otherwise be a straightforward plan change.

We consider that a more efficient approach would be to impose a timeframe within which any newly identified SNAs must be incorporated into district plans. This could allow newly identified SNAs to be bundled together into one plan change specifically for this purpose, or within another relevant plan change that is being progressed at the time. This could also be tied in with the Regional Council monitoring requirements that are set out in Section 3.25 of the draft NPS-IB.

4. Restricted activities within SNAs remain in the draft NPS-IB (Sections 3.10 and 3.11)

We support the inclusion of further 'exceptions' to the requirement to avoid adverse effects on SNAs from subdivision, use, and development.

We also support the inclusion of an exception for the construction of a single dwelling on a site created prior to the NPS-IB taking effect. However, we are concerned that the draft NPS still does not provide for the following reasonable activities:

- The removal of vegetation within 'x' metres of a lawfully established dwelling. This activity may be necessary for safety reasons, or for reasonable use of the dwelling.
- Trimming and maintenance activities within a SNA. It is unclear whether the exception at Section 3.11(4)(a) applies in these circumstances.
- Maintenance of existing open areas, tracks, fire breaks, accessways, fences or on-site services on reserve land that is not Crown-owned.
- The removal of vegetation and associated ongoing maintenance to provide new public tracks and amenities on reserve land.
- The removal of vegetation for the purpose of biodiversity management on reserve land (such as the construction of predator-proof fencing).

We also caution that section 3.10 of the draft NPS-IB will still place significant restrictions on reasonable use and development of land within SNAs. This is because of the direction to 'avoid' adverse effects in the first instance, which would be a 'non-complying activity' status. A resource consent with a non-complying activity status and an 'avoid' policy direction sets a very high bar for applicants and would be challenging to obtain. This section does not provide clarity about which activities would be captured by this provision, but we consider that a significant number of activities would trigger this 'avoid' direction.

5. Lack of clarity about 'existing activities affecting SNAs' (Section 3.15)

The draft NPS-IB includes a section (section 3.15) that directs regional councils to identify in their policy statements the existing activities, or types of existing activities that the clause applies to. This section is ambiguous as to what these activities might be or how this section is to be implemented.

We seek an amendment to this section to provide greater clarity about its application.

6. General rules to protect biodiversity outside of SNAs are overly restrictive (Section 3.16)

The draft NPS-IB requires that local authorities must also take steps to maintain indigenous biodiversity outside of SNAs. In doing so, the district plan must:

- apply the 'effects management hierarchy' to any adverse effects on indigenous biodiversity of a new subdivision, use, or development that may be irreversible; and
- provide appropriate controls to manage other adverse effects on indigenous biodiversity of a new subdivision, use and development.

It is unclear at which scale the effects management hierarchy would be triggered and this approach could require ecological assessments for all subdivisions and development no matter the location, triggering a large volume of resource consent applications. We would like to see greater clarity to determine when effects are considered irreversible. We ask for further clarity about the application of this section to ensure a reasonable and consistent approach.

7. Ambiguity in implementing aspects of the draft NPS-IB

The draft NPS-IB still contains ambiguity regarding roles and responsibilities. Some of these are assigned to “local authorities” rather than specifying whether the responsibility sits with a territorial or regional authority. This ambiguity risks overlapping or contradictory decision making and management.

We recommend that there be further clarity about jurisdictional responsibility. While it is clear that regional councils are responsible for the identification and mapping of highly mobile fauna areas (section 3.20(1)), clause 3.20(3) uses the more generic term of ‘local authorities’ in relation to the inclusion of plan provisions that maintain viable populations of specified high mobile fauna across their natural range.

8. Implementation support package

We support the proposed implementation measures that have been set out in the draft NPS-IB Implementation Plan. Our submission would also like to address specific concerns about available funding and how it will be administered.

- **Funding to support engagement with tangata whenua may be insufficient**

We strongly support the collaborative approach with tangata whenua that is proposed in the draft NPS-IB. We also support the inclusion of funding for training and financial support for iwi/Māori in the Implementation Plan.

Meaningful engagement with tangata whenua can be at risk when confronted with tight statutory deadlines and competing priorities. In working with our Mana Whenua partners on matters such as implementing the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and the Three Waters Reform, we have heard that it is increasingly challenging for them to engage on this important work when the scope of their rohe encompasses several local authority boundaries.

To implement this NPS-IB in meaningful partnership, additional support and/or time is necessary to ensure tangata whenua have the capacity to engage across all local authorities that they partner with.

- **Funding allocation is unclear**

\$19 million has been allocated to support the implementation of the NPS-IB for iwi/Māori, private landowners and councils. We are concerned that this amount may be insufficient once split across the country and across the different stakeholders. There is also a lack of detail provided in the Implementation Plan about how these funds will be allocated.

- **Additional support to Council funding needs adequate administration and greater clarity**

The Implementation Plan proposes additional support to council biodiversity funding. It is important that this funding is complemented with appropriate resourcing to administer the funds. Demand is likely to be high and applications require significant staff time to process. It is not clear from the Implementation Plan how this funding will be administered and who will be responsible for administering it.

DRAFT