

Submission

To: Ministry for the Environment

Biodiversity Team

Ministry for the Environment

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By: Northland Regional Council

On: Proposed National Policy Statement for Indigenous Biodiversity

1. Introduction

- 1.1. Northland Regional Council (NRC) is grateful for the opportunity to comment on the Proposed National Policy Statement for Indigenous Biodiversity (NPS-IB). NRC's submission is made in the interest of maintaining biodiversity values, promoting the sustainable management of Northland's natural and physical resources and the social, economic, and cultural wellbeing of its people and communities. NRC's submission is generally focused on parts of the NPS-IB that relate to our functions under the RMA (the Act) but also covers other matters that we consider could create issues for our treaty partners, landowners, stakeholders and district councils.

2. Background

- 2.1. Northland supports a wide variety of unique indigenous biodiversity which is highly valued for its intrinsic worth but also the benefit it provides in terms of socio-economic, cultural, amenity and ecosystem services. NRC commits a significant amount of its resources towards the management of biodiversity - however our planning provisions are primarily focussed on freshwater and marine ecosystems as our Regional Policy Statement gives responsibility for terrestrial biodiversity provisions to district councils. We also undertake a wide range of biosecurity activities that contribute to the maintenance and enhancement of indigenous biodiversity across all environments. Council committed \$8.42 million to biodiversity and biosecurity activity in the 2019/20 financial year, which represents about 17% of the year's total budget. Our communities also contribute a huge amount of time and effort towards looking after their local environments

in numerous ways and locations across the region - NRC often acts as a facilitator, advisor and funder for these community efforts because in our view partnerships and collaboration are fundamental in delivering results.

- 2.2. While we understand the NPS-IB is primarily focussed on terrestrial biodiversity (so may have more implications for district than regional councils), NRC has a strong interest in ensuring it is effective, contributes positively and does not add undue complexity or costs. We also want to ensure that the NPS-IB does not create a disincentive for landowners to retain and protect biodiversity. We provide more detail on these matters below.

3. Submission

General comments:

- 3.1. The ability to maintain biodiversity values is undermined by limiting the scope of the NPS-IB to terrestrial habitat (Section 1.5). Many native species (birds, bats, lizards, frogs, seals) rely on terrestrial as well as freshwater and/or marine habitat.
- 3.2. NRC supports the intent of the NPS-IB and agrees there is a need for national direction under the RMA for the management of biodiversity. The objectives and policies are generally coherent and are supported. However, they do not all reflect the scope of the NPS-IB which with the exceptions of restoration, geothermal habitat and regional biodiversity strategies, is limited to terrestrial biodiversity. For example, the objective, policy and implementation requirement of 'integrated management' (Objective 4, Policy 4 and clause 3.4 clause a) and c)) somewhat 'stifles' the ability of local authorities to manage biodiversity in an integrated way across domains.
- 3.3. Another issue in terms of scope is that the NPS-IB does not appear to give any explicit direction in relation to resource consent processes (other than some additional matters relating to Schedule 4 RMA).
- 3.4. The NPS-IB is extremely ambitious and in our view attempts to do too much - some of the content is also extremely problematic to implement in an effects-based RMA framework (i.e. the restoration provisions). We recommend protection be the priority as this is more pressing and better suited to the RMA framework. We also note the general theme or intent in Section 45A RMA that the indicates national policy statements should direct content of plans and policy statements rather than delve into

territory more suited to Local Government Act processes or directing non-regulatory content.

- 3.5. Another area of complexity for councils is managing the tensions or competing direction in other operative and proposed NPS such as the NZ Coastal Policy Statement (NZCPS), NPS for Freshwater Management (NPSFM), NPS for Urban Development and NPS for Versatile Soils, especially where there is conflicting direction or overlap (E.g. wetland requirements in both NPS-FM and NPS-IB). This creates an extremely difficult 'policy landscape' for councils to navigate in plan making and consenting – the same can be said for landowners, Māori and industry who must also come to grips with this overlapping policy framework.
- 3.6. Overall, while we support the intent, we have major concerns over the complexity, cost implications (for councils, landowners and consent applicants) and implementation generally. This will require significant central government support in the form of clear implementation guidance, expertise, consistent monitoring regime and funding to support local government, landowners and iwi. The impact on Māori land (especially undeveloped Māori land that includes some of the higher value and least impacted remaining habitats) will be significant and likely impose restrictions on its development and use – it could also have implications for customary use of resources by Māori. While the cost benefit analysis explores some of these issues, it is comparatively high level and in our view underestimates implementation, compliance and opportunity costs. It could also create a perverse outcome whereby landowners view SNA's negatively and the NPS-IB achieves the opposite of the outcome sought. We expand on these points in more detail below. We strongly recommend the NPS-IB be simpler, clearer, more targeted and better aligned with other NPS.

Application

- 3.7. Logically all biodiversity management should be in the NPS-IB to provide an integrated approach across ecosystem and habitat types. We recommend that it apply to the coastal marine area, freshwater and terrestrial ecosystems as these are 'connected' in many ways as the piecemeal approach in the NPS-IB creates arbitrary boundaries that do not reflect ecosystem function – for example much of NZ's fauna rely on connectivity between estuarine, wetland, river, riparian and terrestrial ecosystems. We note the NZCPS is due for review and could be amended to defer all biodiversity direction to the NPS-IB. While the Proposed NPS-FM includes direction on maintaining the ecosystem health of waterbodies, this is primarily limited to water quality and quantity

management and controls on wetland and stream disturbance – there is no requirement to identify SNA’s in waterbodies under the Proposed or operative NPS-FM other than the requirement to identify outstanding fresh waterbodies (which are not necessarily identified on the basis of biodiversity values). We see this as a gap. The NPS-IB could be amended to address this, by requiring SNA be identified and managed in fresh waterbodies and the CMA. Guidance on the identification and management of biodiversity in the CMA will likely become more important following Court decisions on the Motiti case in the Bay of Plenty and the scope for regional councils to manage fishing activity in certain circumstances.

Objectives

- 3.8. As noted above, the objectives are generally supported but we reinforce the point made above that the Objective 4, Policy 4 and Section 3.4 are compromised given the limited scope of the NPS-IB in that it excludes the CMA and fresh waterbodies. These provisions (and those related to connectivity) are effectively limited to cross-district boundary issues rather than reflecting a truly integrated approach.

Policies

- 3.9. The management of ‘mobile’ fauna is extremely problematic and the regime in the NPS-IB does not make things any easier - Section 3.15 and the definition of highly mobile fauna is extremely vague and could include most species of bird, many reptiles, frogs, bats and invertebrates. Detailed spatial information is scarce for many of these species. Therefore, the implications are significant if applied to private land. We recommend SNA mapping requirements are limited to areas of significant vegetation / habitats and that protection of (highly) mobile fauna outside those areas is prioritised in regional biodiversity strategies and managed through best management practices. For example, the approach outlined in section 3.10 in plantation forestry could equally apply to other long-term large-scale activities where best management practices can recognise beneficial actions (e.g. pest control and providing habitat) while minimising/managing adverse effects.

Implementation requirements

- 3.10. Section 3.4 (integrated approach) – note comment above at Para 3.6. Section 3.5 (resilience to climate change) is well meaning but again extremely vague and seems to confound a range of concepts and functions – for example restoration and enhancement proposals would not normally be subject to RMA decisions and are more likely considered through a non-regulatory process. This Section is not a good fit in the RMA regime which is not designed to ‘compel’ action but to manage

effects of activities. We suggest this section be deleted – a similar (and clearer) requirement could however be included in regional biodiversity strategies.

- 3.11. NRC supports the requirement to identify SNA's in Section 3.8, however we strongly oppose the requirement to rank them as high or medium. The rationale for this ranking requirement is unclear – a two tier system adds unnecessary complexity and does not reflect Section 6(c), which makes no such distinction. The criteria in Appendix 2 used to define high and medium value SNA's are also vague and so open to interpretation that it is unlikely to be applied with any consistency. We strongly recommend this requirement and Appendix 2 be deleted as it adds nothing but complexity and will result in unproductive and costly disputes for no benefit (with consequential amendment to other clauses). The NPS-IB should simply require SNA's be identified in accordance with Appendix 1. Clauses 3.8(7) and (8) should also be deleted – Clause (7) is unnecessary (plans are reviewed every 10 years anyway) and the requirement to update SNA's in plans every 2 years in Clause (8) is extremely costly and we note plan changes under the RMA often take 2 years or more to complete in any case. Also, if biodiversity values are not mapped in a plan but identified as significant, while not caught by rules, they still get the benefit of relevant policies. We'd suggest this be left to the discretion of councils given if the SNA were identified during a consent or designation, conditions can be applied to protect it in the interim – and the policies of the NPS-IB would also apply.
- 3.12. Section 3.9 (managing adverse effects on SNA's) should be amended to delete the reference to medium value SNA's. Clause 3.9(2) applies an extremely onerous test in medium value SNA's (all tests must be met). We oppose this approach as there will inevitably be circumstances where development has no alternative location, a functional need and / or policy support in NPS's (E.g. renewable energy generation, or nationally significant infrastructure) and the 'avoid adverse effects' regime has very high opportunity costs. We consider the effects management hierarchy including offsetting (in accordance with principles for biodiversity offsetting) should be available in those circumstances listed in Clause 3.9(2) and (3) – noting Clause 3 could effectively compromise the reasonable use of private land (Refer Section 85 RMA). Put simply we recommend that Section 3.9 should require adverse effects be avoided on matters in a) (i-iv) except where the circumstances in Clause 3.9(2) and (3) arise, whereby the effects management hierarchy (and offsetting) can be applied (an alternative could be to require 'no net loss' in biodiversity, although this is also fraught). This is a far more pragmatic

approach that will in our view better meet the purpose of the RMA set out in Section 5 of the Act. As an aside, we consider offsetting should be applied to more than minor residual effects – to require it to be applied to all residual effects is overly onerous.

- 3.13. We agree with the approach taken in relation to plantation forests but suggest Section 3.10 simply state this rather than attempt to apply vague and unnecessary direction (i.e. clauses 2 and 3 add nothing given the effect of Plantation Forestry NES).
- 3.14. Section 3.12 (existing activities in SNAs) is problematic and would be extremely hard to implement. Existing activities are typically authorised by a resource consent, permitted activity rule or existing use right. ‘Interference’ in existing activities is also likely to be extremely contentious and given the activity is already established / occurring effects are likely to have already occurred or been managed by conditions of consent or permitted activity rules. The wording in Clause 3.12 is also extremely vague and we do not consider there is sufficient cause to intervene in this manner – it also seems to contradict Section 10 RMA that provides for existing use rights in relation to district plan rules. We also note that councils can review resource consents in certain circumstances and if needed can revisit permitted activity rules if activities are considered to have adverse effects. We strongly recommend that Section 3.12 be deleted entirely.
- 3.15. Implementation of Section 3.13 is also problematic in some instances and is poorly drafted – for example Clause 1(c) does not make sense – how are plan provisions to identify when an area deemed not to be an SNA should be assessed to test whether it is an SNA? Further how would a council implement Clause 3.13(2) where the SNA is not currently mapped / scheduled in a plan and therefore no ‘SNA’ rules apply to it? We recommend deleting Clauses 3.13(1)(c) and 3.13(2) as in our view these are not implementable.
- 3.16. Section 3.14 (identified taonga) should clarify that the requirements of these clauses can be included in Mana Whakahono a Rohe (iwi participation arrangements), rather than require a separate process.
- 3.17. Section 3.15 is extremely vague and even if clarified will be difficult to implement and would undoubtedly apply to large tracts of private and

Māori land in Northland and therefore be extremely contentious. It is more suited to a non-regulatory approach and we therefore recommend this requirement (or similar with clearer language) be deferred to regional biodiversity strategies.

- 3.18. Section 3.16 has similar issues and again is far better pursued in a non-regulatory manner – the RMA is not a regime that is designed to compel activity, rather it's focus is managing adverse effects. Further the RMA cannot commit resourcing or funding, which occurs through Local Government Act processes (E.g. annual and long term plans). The need to include areas for restoration and enhancement in regional policy statements is unclear. We recommend this section be deleted and instead be identified as content in regional biodiversity strategies. The same could be said for the wetland requirements which seem at odds with Section 1.5 of the NPS-IB which limits scope to terrestrial biodiversity.
- 3.19. Section 3.17 of the NPS-IB is unusual and again we note that the RMA is not designed for such purposes. The rationale for requiring all 'urban' and 'rural' environments to have a target of at least 10% indigenous cover is unclear and frankly completely out of step with the purpose of the RMA. An arbitrary requirement for 10% indigenous cover in urban areas also has the potential to frustrate the intent of the NPS on Urban Development and further constrain housing affordability for little obvious benefit, especially where the urban area was previously pasture. This section demonstrates a poor understanding of how the RMA works and the role of instruments such as NPS – it should be deleted in its entirety. If any such need is apparent within a region / district it should be at the discretion of the relevant council as to how this is addressed. Also, it may well be that habitat quality is far greater an issue in some areas, rather than quantity.
- 3.20. The requirement to develop regional biodiversity strategies in Section 3.18 has some merit and as noted above we see the potential to include elements of the NPS-IB in such strategies.
- 3.21. Section 3.19 appears to be an attempt to re-write Schedule 4 RMA which we do not see the need for, nor would we support – especially in the manner set out as this would in our view generate unnecessary costs, confusion and duplication. We do not consider this to be consistent with the intent of Section 45A RMA (Content of National Policy Statements).

We strongly recommend the entire section be deleted. Clause 3.19(3) is incoherent and should also be deleted.

- 3.22. Section 3.20 (monitoring plans) provides no clear objective for the monitoring i.e. is it to provide for reporting nationally, regionally or on individual sites to drive management actions? These are all very different. It should also explicitly allow for use of 'representative sites' rather than requiring every SNA site to be monitored – in Northland there will be a significant number of SNA's and monitoring every single one would be extremely onerous and is unlikely to be necessary (councils often use representative sites in monitoring plans to assess the state of the environment).

Appendices

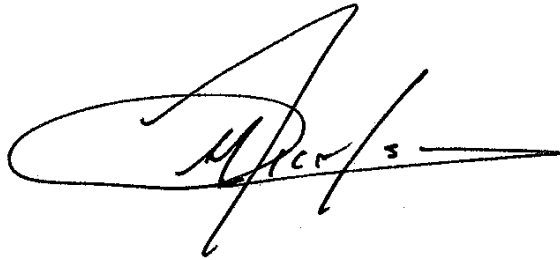
- 3.23. The title of Appendix 1 (criteria) should be amended to refer to SNA rather than 'identifying significant indigenous vegetation and significant habitats of indigenous fauna' so it is clear SNA's are the subject and language is consistent. Otherwise the criteria appear to be consistent with good practice. Appendix 2 should be deleted as the two-tier approach to ranking SNAs overly complicates matters for no gain. Appendices 3 and 4 are useful and again appear to reflect widely accepted good practice.

4. Conclusion

- 4.1. NRC thanks the Ministry for the opportunity to provide feedback on the Proposed NPS-IB. As noted, we support the intent and agree some national direction is required, however we have concerns at the cost implications for councils, landowners and infrastructure providers. The opportunity costs for Māori are especially alarming given the likely implications for Māori land. We also have concerns at the complexity in the NPS-IB (particularly resolving the competing tensions that we foresee with direction in other NPS) and the difficulty in implementation we anticipate arising with many of the provisions. We consider this stems in part from the fact the NPS-IB attempts to do too much and to do things that are not a good fit with the RMA regime. We urge the Ministry to take our comments on board when revising the NPS-IB and to create a simpler, clearer more targeted suite of provisions. We have a long history in working with the RMA and managing biodiversity in collaboration with Māori and our local communities – this is challenging enough without adding further cost and complexity.

- 4.2. We also question the timing of the release of the NPS-IB given we understand NZ is due to sign international conventions on biodiversity and the release of the NZ Biodiversity is imminent. We recommend these higher order documents be used to inform decisions on the NPS-IB.

Signed on behalf of Northland Regional Council

A handwritten signature in black ink, appearing to read 'M Nicolson', with a large, sweeping flourish above the name and a horizontal line extending to the right.

Malcolm Nicolson (Chief Executive Officer)
2020

Dated: 26 / 02 /