



Proposed National Policy Statement for Indigenous Biodiversity

To: Biodiversity Team
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Submission on: He Kura Koiora i hokia - Discussion Document on a proposed National Policy Statement for Indigenous Biodiversity (hereafter referred to as '**the Discussion Document**'); and
Proposed National Policy Statement for Indigenous Biodiversity (hereafter referred to as '**the pNPS IB**')


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1.0 INTRODUCTION

King Country Energy Limited (hereafter referred to as ‘KCE’ or ‘the Company’) is a publicly owned renewable electricity generation company, with its two largest shareholders being Trustpower Limited (75.0 percent) and King Country Electric Power Trust (25.0 percent).

KCE was incorporated in 1991, taking over the business of the King Country Electric Power Board and was subsequently restructured in 1999, as a consequence of the Electricity Industry Reforms Act 1998. The reforms resulted in KCE and Waitomo Energy Services firstly combining their assets, and then splitting their assets. It was at this point that KCE acquired the generation and retail businesses held by the two organisations. In 2018 KCE sold its retail business creating the business in its current form, as a generation only business.

KCE has its head office in Taumarunui. The Company owns and operates three hydroelectric power generation schemes (hereafter referred to as ‘Schemes’ or ‘HEPS’) in the Waikato Region. These Schemes include Kuratau (6MW, 28GWh), Mokauiti (1.7MW, 7GWh) and Wairere (4.6MW, 18GWh). In addition, KCE owns the Piriaka Scheme (1.3MW, 7GWh) in the Ruapehu District and the Mangahao Scheme (36MW, 131GWh) near Shannon in the Manawatu; and each of these are operated by Trustpower Limited. Together, these Schemes provide security of a renewable supply of electricity to approximately 18,000 homes in the King Country and Horowhenua areas, as well as an efficient supply by reducing transmission losses compared to sourcing electricity from further afield. Consequently, the on-going operation of the Schemes is particularly important to the supply of electricity to these areas.

The location of each scheme is identified in Figure 1 of this submission.



Figure 1: Location of KCE's Hydroelectric Power Generation Schemes

KCE is committed to sustainable power generation and maintains its assets for the long term safe, reliable and responsible use of its resources. With respect to sustainable resource management, KCE has a significant interest in measures to improve the ecosystems associated with their activities. As such, the Company has been, and continues to be, involved with both central government policy and regional plan and policy changes that seek to maintain or improve ecosystems, including lodging submissions to national, regional and district plan and policy documents.

This submission is made to the documents titled "*He Kura Koiora i hokia Discussion Document on a proposed National Policy Statement for Indigenous Biodiversity*" (hereafter referred to as '**the Discussion Document**') and "*Draft National Policy Statement for Indigenous Biodiversity*" (which KCE notes is referred to in the Discussion Document and on the Ministry for the Environment's website as the proposed National Policy Statement for Indigenous Biodiversity).

The Company records that it wishes to be involved with all (currently draft, proposed and future) regulatory reform related to indigenous biodiversity matters and amendments to the same.

2.0 STRUCTURE OF SUBMISSION

This submission includes both of the following sections, and these should be read in combination:

- **Section 4**, which provides submissions on overarching issues with the pNPS IB; and
- **Section 5**, which provides submissions on specific provisions of the pNPS IB.

3.0 POST SUBMISSION MEETING

KCE would welcome a meeting with the Ministry for the Environment and government officials to discuss and elaborate on the points raised within this submission, or to respond to any questions or queries that officials might have with respect to the submission. Please do not hesitate to contact Mr Chris Fincham in this regard.

4.0 SUBMISSIONS ON OVERARCHING ISSUES WITH THE pNPS IB

4.1 Support for Central Government Direction on the Protection of Indigenous Biodiversity

KCE agrees that there is a need to protect significant indigenous biodiversity, and that clear direction at a national level is needed in this regard.

While many councils and landowners have attempted to provide protection to indigenous biodiversity in past years, a number of key flaws in past approaches have been experienced and, in many instances, these have directly worked against the biodiversity outcomes that were being sought and have frustrated relationships between councils, iwi, landowners and the wider community.

KCE considers that it is critical that learnings are taken from past attempts to protect indigenous biodiversity, and that 'mistakes' are not repeated.

Key matters that have, in KCE's experience, worked against protection of indigenous biodiversity in the past include:

- a) Lack of landowner and community involvement from the outset and throughout the process;

- b) Inadequate and unreasonable timeframes that have driven poor decision making, unjustified 'protection' of some areas, and unwanted behaviours in terms of biodiversity management on the ground;
- c) Unclear, impractical and/or disjointed regulation at both the central and local level; and
- d) Regulation that takes a defensive rather than a positive approach to biodiversity management.

KCE considers that the pNPS IB, in its current state, does not address these past mistakes and therefore KCE does not support adoption of the pNPS IB as it currently stands.

The following sections refer to each of the matters set out in a) to d).

4.2 Landowner and Community Involvement

KCE understands that a large portion of New Zealand's significant natural areas (SNAs) and indigenous biodiversity lies on private land; and the Company believes that it is essential that landowners and the community are directly and fully involved in the identification and management of SNAs. KCE considers that many attempts to protect SNAs in the past have failed because the identification of SNAs, and the imposition of regulations, has been carried out in the absence of landowner involvement.

Most landowners embrace the role of kaitiaki and stewardship, and have a good knowledge of the species present, and changes in flora and fauna populations over time. This ethic and knowledge should be seen by both local and central government as an asset that can add to successful management of indigenous biodiversity. Further to this, landowners need to understand and support regulatory requirements for them to work. In the absence of such understanding and willingness to implement regulations, the desired indigenous biodiversity outcomes are unlikely to be achieved.

Past attempts at local government protection of SNAs have created perverse outcomes such as quick clearance of indigenous vegetation prior to regulations being enforceable, key areas of indigenous vegetation remaining unprotected, landowners walking away from self-funded pest management of indigenous vegetation on their properties, and unnecessary compliance costs for landowners that dilute their commitment to active guardianship.

For indigenous biodiversity to be maintained, or enhanced where needed, central and local government must put the people first. It is the landowners and community that will be the day to day kaitiaki for the environment, and they must be empowered to take on this role and not feel stifled by unnecessarily constraining or unclear regulation.

Relief Sought

1. Based on the preceding comments, KCE seeks that the pNPS IB be amended to ensure that landowners and the community are encouraged to be fully involved in the ongoing identification and management of SNAs and indigenous biological diversity. Specific relief sought in this regard is outlined in Section 5 of this submission.

4.3 Regulatory Timeframes

KCE is aware that previous regulated tight timeframes, or unregulated council targets, have led to less than ideal processes for identification and management of SNAs and indigenous biological diversity. Tight timeframes, combined with a lack

of technical expertise, have previously prevented sound landowner and community involvement in such processes, and have led to adoption of poor technical advice and desktop processes that have wrongly identified (or missed) SNAs. Together these limitations have resulted in overly constraining regulation, or gaps in regulation, that has often prevented sound management of indigenous biodiversity rather than advanced it.

Regulated timeframes must factor in the availability of the necessary technical expertise across the country, and the opportunity for landowner and community engagement and involvement. Without this, the quality of local planning to maintain (or enhance) indigenous biological diversity will be significantly compromised.

KCE has been advised that there is insufficient expertise within New Zealand currently to enable each of the councils to develop the necessary local plan changes within the timeframes set in the pNPS IB. This will encourage adoption of compromised processes in the identification of SNA's and the development of plan changes. In turn, this will likely repeat the flaws of past attempts to regulate the management of SNAs.

Relief Sought

2. Based on the preceding comments, KCE seeks that the timeframes within the pNPS IB be able to be amended, where it is shown to be necessary to fully account for the availability of technical expertise, and to allow for fulsome landowner and community involvement in the ongoing identification and management of SNAs and indigenous biological diversity. In this regard, KCE seeks adoption of a clause similar to Policy E1 in the National Policy Statement for Freshwater Management. Specific relief sought in this regard is outlined in Section 5 of this submission.

4.4 Clear and Workable Regulation

While KCE supports the intent behind many of the components within the pNPS IB, the Company considers that there is a large amount of duplication, disjointedness, and lack of clarity that leaves the pNPS IB open to significant challenge in planning processes (and the Environment Court), and will likely work against achievement of the intended maintenance (or advancement) of indigenous biological diversity.

For example, the relationship between clause 1.7(4) (that is the “*Fundamental concepts*”, “*Adverse effects on indigenous biodiversity*”), the definition of the “*effects management hierarchy*” in clause 1.8, clause 3.9 “*Managing adverse effects on SNAs*”, and Appendix 2 “*Tools for managing effects on significant natural areas*” is unclear. When read together, they form a particularly restrictive regime which will likely prevent any activity, of any nature or scale, within an SNA. In KCE's view, the combined effects of these provisions will prevent the ability to undertake weed control in an SNA, prevent access to an SNA and thereby the community's understanding and connections with indigenous flora and fauna, and prevent maintenance (including for safety purposes) of significant infrastructure such as power generation plants, amongst other activities of any form. Further to this, the lack of clarity will likely result in lengthy planning and court processes for individual councils across the country as the interpretation of the relationship is teased out and established outside of the pNPS IB. This in turn will delay the advances in the maintenance (and as necessary, the enhancement) of indigenous biodiversity being sought by the introduction of the pNPS IB.

Relief Sought

3. Based on the preceding comments, KCE seeks the specific changes to the pNPS IB as set out in Section 5 of this submission document. Notwithstanding this, KCE seeks simplification of the pNPS IB provisions and greater clarity of how the separate provisions are to work together. Wherever possible, this should be addressed within the pNPS IB itself, and where not possible the insertion of guidance notes into the pNPS IB are sought.

4.5 Positive Regulation

KCE is concerned that the pNPS IB takes a very constraining approach to the management of indigenous biodiversity. This can alienate people from wanting to be involved, and can create a sense of burden towards the presence of indigenous flora and fauna on properties. The Company considers that this will ultimately work against the outcomes sought by introducing the pNPS IB.

KCE seeks a re-work of the pNPS IB to create regulation that encourages the involvement of landowners and the community in the identification, maintenance and enhancement of indigenous biodiversity in New Zealand. The Company is concerned that without a significant re-work, the pNPS IB will result in the same (or similar) ‘mistakes’ and unintended consequences that New Zealand has experienced in the past with respect to the identification and management of indigenous biodiversity.

Relief Sought

4. KCE seeks a re-work of the pNPS IB to create regulation that encourages the involvement of landowners and the community in the identification, maintenance and enhancement of indigenous biodiversity in New Zealand.

[Section 5 of this submission follows on the next page.]

5.0 SUBMISSIONS ON SPECIFIC PROVISIONS

The following table sets out KCE’s submissions on specific provisions of the pNPS IB. Note that the numbering of relief sought follows on from the relief sought in Section 4 of this submission.

Provisions	Submission	Relief Sought
1. PROVIDING FOR HUTIA TE RITO		
Subclause 1.7(1) Clause 2.1, objective 3 Clause 3.2 Subclause 3.3(1)(b)(ii)	<p>KCE supports the inclusion of Hutia Te Rito as a fundamental concept that underpins the pNPS IB. The Company recognises the undeniable importance of the relationship between the health of people and the health of the environment. KCE agrees that people are both part of, and dependent on, the natural environment and ecosystems; and the Company is committed to its role as kaitiaki of the natural environments associated with its infrastructure and activities.</p> <p>The success of incorporating Hutia Te Rito into the pNPS IB, and local planning mechanisms, relies on clarity of its interpretation, particularly when it is adopted as an objective of the pNPS IB (objective 3), and made a matter that local authorities must recognise and provide for (as in Clause 3.2 of the pNPS IB).</p> <p>KCE supports inclusion of an explanation of the concept (as provided in Clause 1.2 of the pNPS IB) and inclusion of minimum requirements of local authorities (as provided in subclause 3.2(2) and subclause 3.3(1)(b)(ii)). However, KCE considers that further detail on the required application of the concept is needed within the pNPS IB, and outside the pNPS IB as support.</p> <p>For example, with respect to clause 3.2(2)(b) of the NPS IB it is not clear what is meant by requiring local authorities to recognise the role of kaitiakitanga and stewardship in the maintenance of indigenous biodiversity. It is not clear how a local authority would show, beyond challenge, that they have met this requirement. Further to this, where the required recognition may have been</p>	<ol style="list-style-type: none"> 5. Retain inclusion of Hutia Te Rito as a fundamental concept that underpins the pNPS IB. 6. Retain an explanation of the concept of Hutia Te Rito as provided in subclause 1.7(1). 7. Retain minimum requirements for how local authorities are to recognise and provide for Hutia Te Rito. 8. Notwithstanding the preceding relief, amend subclause 3.2(2) to provide greater certainty for local authorities, and parties to planning processes, of what the pNPS IB requires to be undertaken and achieved by local authorities when recognising and providing for Hutia Te Rito. In particular, provide greater certainty to what is required by subclauses 3.2(2)(b) and 3.2(2)(c). 9. That robust guidance be developed and available to local authorities and other parties on the concept of Hutia Te Rito and how it should be applied in the maintenance or improvement of indigenous biodiversity.

Provisions	Submission	Relief Sought
	<p>provided, it is not clear what the authority is then required to do in response to such recognition. The lack of clarity in this requirement leaves room for considerable challenge (and associated time and costs for parties) during local planning processes.</p> <p>With respect to subclause 3.2(2)(c) it is not clear what is intended by the requirement to “takes steps” or how a local authority would show, beyond challenge, that they have met this requirement.</p> <p>KCE notes that the inclusion of the concept of Te Mana o te Wai in the National Policy Statement for Freshwater Management (NPS FM), while supported, has led to considerable time and cost in council and Environment Court hearings across the country as parties have held differing understandings of the concept and how it is required to be implemented by the NPS FM. KCE understands that a current example of the challenges associated with interpreting the requirement of the NPS FM, with respect to Te Mana o te Wai, is the ongoing appeal hearings related to the proposed Southland Water and Land Plan.</p> <p>To minimise the potential for lengthy planning and court processes, the Company is seeking a greater degree of clarity in the pNPS IB on the requirements for implementation of Hutia Te Rito,</p> <p>Further, while KCE considers that it is important that the pNPS IB is clear in its own right, the Company also recognises the value in providing additional guidance material and case studies to illustrate good implementation of the concept of Hutia Te Rito. Accordingly, KCE seeks central development of robust guidance material to support local authorities and other parties who are working to implement the concept of Hutia Te Rito in the maintenance or improvement of indigenous biodiversity.</p>	
2. PROVIDING FOR THE PRINCIPLES OF THE TREATY OF WAITANGI		

Provisions	Submission	Relief Sought
<p>Clause 2.1, objective 2 Clause 2.2, policy 1 Clause 3.3</p>	<p>KCE supports objective 2, policy 1 and clause 3.3 of the pNPS IB as a means to provide councils with greater clarity on how to meet their obligations (established in the Resource Management Act) in relation to the Treaty of Waitangi when making decisions about indigenous biodiversity. With this, the Company supports early and meaningful collaboration and consultation with tangata whenua and the adoption of mātauranga Māori in the management of indigenous biodiversity.</p> <p>However, KCE is concerned that there remain areas of uncertainty within clause 3.3. The terms “<i>as far as practicable</i>” and “<i>take all reasonable steps</i>” leave considerable room for differing expectations of what is practicable or reasonable. As these terms are adopted in a requirement that councils “<i>must</i>” meet, these terms create the potential for being challenged (and associated time and costs for parties being incurred) during the local planning processes. Given this, KCE considers that it is important that guidance material and case studies are provided, to local authorities and other parties, to illustrate best practice when collaborating and consulting with tangata whenua and when incorporating mātauranga Māori as required by the pNPS IB.</p>	<p>10. That robust guidance be developed and available to local authorities and other parties to illustrate best practice when collaborating and consulting with tangata whenua, and incorporating mātauranga Māori, in implementing the pNPS IB.</p>
<p>3. THE ROLE OF LANDOWNERS, COMMUNITIES AND TANGATA WHENUA</p>		
<p>Clause 2, objective 6</p>	<p>KCE considers that objective 6 is incomplete. While its focus is on recognising the role of landowners, communities and tangata whenua as stewards and kaitiaki of indigenous biodiversity (which KCE supports), the listed actions in the pNPS IB of the same objective do not include the role of these parties as stewards and kaitiaki. Rather the actions are limited to growing an understanding of “<i>nature</i>” and allowing people to provide for their wellbeing.</p>	<p>11. Amend objective 6 as follows:</p> <p><i>“Objective 6: to recognise the role of landowners, communities and tangata whenua as stewards and kaitiaki of indigenous biodiversity by</i></p> <p><u><i>a) working with landowners, communities and tangata whenua in the identification and management of indigenous biodiversity; and</i></u></p>

Provisions	Submission	Relief Sought
	<p>As illustrated in other parts of KCE’s submission, the Company considers that there needs to be a clearer and stronger focus provided throughout the pNPS IB to the value that landowners, as stewards and kaitiaki of indigenous biodiversity, offer to the identification and management of indigenous biodiversity. Landowners often hold the greatest awareness of what species are present, and how populations have changed over time. Landowners will also be the ones facing any constraints on activities as a result of managing for indigenous biodiversity outcomes. Therefore, KCE considers that it is important that they are encouraged to be fully involved in the processes set out in the pNPS IB, including identifying sites of SNAs and methods for maintaining (or where necessary, enhancing) indigenous biological diversity.</p>	<p><i>b) allowing people and communities to provide for their social, economic and cultural wellbeing now and in the future; and</i></p> <p><i>c) supporting people and communities in their understanding of, and connection to, <u>nature indigenous biodiversity.</u>”</i></p>
4. SOCIAL, ECONOMIC AND CULTURAL WELLBEING		
<p>Clause 2, objective 6(b) Clause 3.7</p>	<p>KCE supports the focus provided in objective 6(b) in terms of recognising the importance of people and communities being able to provide for their social, economic and cultural wellbeing. This sits at the heart of sustainable management, since good resource management (including the management of indigenous biodiversity values) relies on a healthy economy, and a healthy economy and community relies on a healthy environment. As previously discussed in this submission, KCE considers that a failure to recognise this can lead to overly restrictive regulation which in turn can alienate people from wanting to be involved, and can create a sense of burden towards the presence of indigenous flora and fauna on properties. KCE considers that both of these outcomes would work against successful management of indigenous biodiversity.</p> <p>In contrast to objective 6(b), clause 3.7(a) turns this relationship around and requires local authorities to recognise “<i>that the</i></p>	<p>12. Retain objective 6(b)</p> <p>13. Amend clause 3.7 as follows:</p> <p><i>“In implementing this National Policy Statement, local authorities must recognise</i></p> <p><i>a) that <u>people and communities need to be able to provide for their social, economic and cultural wellbeing now and in the future</u>the maintenance of indigenous biodiversity contributes to the social, economic and cultural wellbeing of people and communities; and</i></p> <p><i>b) that the maintenance of indigenous biodiversity does not preclude subdivision, use and development in appropriate places and forms, within appropriate limits; and</i></p>

Provisions	Submission	Relief Sought
	<p><i>maintenance of indigenous biodiversity contributes to the social, economic and cultural wellbeing of people and communities”.</i></p> <p>Further, while clause 3.7(b) appears to have a relationship to objective 6(b) by requiring local authorities to recognise “<i>that the maintenance of indigenous biodiversity does not preclude subdivision, use and development in appropriate places and forms, within appropriate limits</i>”, KCE considers that this does not fulfil objective 6(b). Rather, KCE considers that as drafted, clause 3.7 is silent on (or dismisses) the importance of people and communities being able to provide for their social, economic and cultural wellbeing. KCE considers this is a fundamental flaw of clause 3.7 of the pNPS IB.</p>	<p><i>c) that people are critical to maintaining and enhancing indigenous biodiversity; and</i></p> <p><i>d) the importance of forming partnerships between local authorities, tangata whenua, landowners, people and communities in maintaining and enhancing indigenous biodiversity; and</i></p> <p><i>e) the importance of respecting and fostering the contribution of landowners as stewards and kaitiaki; and</i></p> <p><i>f) the value of supporting people and communities in understanding, connecting to and enjoying indigenous biodiversity.”</i></p>
5. IDENTIFYING AND MAPPING SIGNIFICANT NATURAL AREAS		
<p>Clause 2.2, policy 6</p> <p>Clause 3.8</p> <p>Appendix 1</p> <p>Appendix 2</p>	<p>KCE supports adoption of a common set of criteria for identifying significant indigenous vegetation and significant habitat of indigenous fauna (Appendix 1) as this will improve consistency across local authority boundaries, and provide a clear and transparent process to work with communities and landowners. This will also provide greater certainty for resource users with respect to the location of SNAs and what activities can and cannot be undertaken within them. With this, and as previously discussed, KCE notes the importance of working with landowners when identifying and protecting areas of significant indigenous vegetation or significant habitat of indigenous fauna.</p> <p>The Discussion Document states that the criteria set in Appendix 1 for “<i>identifying significant indigenous vegetation and significant habitat of indigenous fauna</i>” are not intended to capture all indigenous biodiversity in an area; rather they are intended to</p>	<p>14. Amend policy 6 as follows:</p> <p><i>“to <u>work with landowners, communities and tangata whenua to identify and protect areas of significant indigenous vegetation or significant habitat of indigenous fauna by identifying and to manage managing</u> them as SNAs”</i></p> <p>15. Retain clause 3.8(1) and clause 3.8(2).</p> <p>16. Add the following after clause 3.8(2)”</p> <p><i>“<u>Guidance note: clause 3.8(1) and clause 3.8(2) apply to areas of significant indigenous vegetation and areas of significant indigenous fauna that have been identified using the criteria</u>”</i></p>

Provisions	Submission	Relief Sought
	<p>identify the significant vegetation and habitats that need protection and management so as to maintain indigenous biodiversity across New Zealand. KCE supports this distinction and considers that this needs to be emphasised within the pNPS IB, for example through adoption of a guidance note.</p> <p>With respect to the timeframes set in clause 3.8, KCE has been advised that for those councils that do not currently have SNAs adequately addressed within their planning documents, the requirement to have identified SNAs within five years will be very challenging. For those councils that have already identified SNAs in a manner that is consistent with Appendix 1 of the pNPS IB, the requirement to have classified these areas as High or Medium (in accordance with Appendix 2) within five years will also be challenging. To achieve these requirements, KCE understands that councils will need access to specialised expertise. KCE considers that there is insufficient capacity of the necessary expertise available across the country to allow all councils to meet these timeframes. In addition to this, KCE notes the importance of SNA identification and management decisions being informed by robust data. Such data takes time to be collected, analysed and applied in decision making. It is crucial that sufficient time is available to ensure decision making achieves the desired outcomes of the pNPS IB, while minimising the potential for unnecessary constraints on landowners.</p> <p>For the preceding reasons, KCE considers that the timeframes set in clause 3.8(3) to clause 3.8(8), inclusive, are too short. The Company accepts that a fast pace is needed to improve indigenous biodiversity management, and that some councils will be able to robustly comply with the requirements of the pNPS IB, including the timeframes as set. However, KCE understands that many councils will not be able to meet these timeframes without significant compromises in the process and quality of technical input, and ultimately the sound management of indigenous biodiversity. For this reason, KCE seeks inclusion in the pNPS IB of a provision</p>	<p><u>set out in Appendix 1, rather than all areas with biological diversity.”</u></p> <p>17. Add new clause 5 as follows:</p> <p><u>a) This clause applies to the implementation of this national policy statement by a local authority.</u></p> <p><u>b) A local authority may extend the dates in this national policy statement that apply to it if it considers that:</u></p> <p><u>i. meeting that date would result in lower quality planning; or</u></p> <p><u>ii. it would be impracticable for it to complete the required implementation by that date.</u></p> <p><u>c) any extension of a timeframe made under subclause b) must not be more than twice the timeframe for the same requirement as set elsewhere in this national policy statement.</u></p> <p><u>d) Where a local authority is satisfied that a date should be extended, it may implement the associated requirement by a programme of defined time-limited stages.</u></p> <p><u>e) Any programme of time-limited stages is to be formally adopted by the local authority by 31 December 2021 and to be publicly notified.</u></p> <p><u>f) Where a local authority has adopted a programme of staged implementation, it is to publicly report, every year, on the extent to which the programme has been implemented.</u></p>

Provisions	Submission	Relief Sought
	<p>equivalent to Section E of the NPS FM which allows regional councils to extend the date by which they must implement the requirements of the NPS FM. Such a provision in the pNPS IB would mean that if a council considered that meeting the dates in the pNPS IB would result in lower quality planning, or would be impracticable for the council to meet, then the council could extend the dates. The council would however be required to implement a programme of defined time-limited stages to meeting the requirements of the pNPS IB. This staged programme would need to be formally adopted by the council, publicly notified, and formally and publicly reported against each year.</p> <p>In addition to the preceding submissions, KCE considers that while it is territorial authorities that are required by these provisions to identify SNAs (rather than regional councils), regional councils can have useful monitoring data and scientific expertise that could be called upon in establishing the location and boundaries of SNAs. KCE therefore encourages collaboration between the territorial authorities and regional councils.</p>	
6. RECOGNISING AND PROTECTING TAONGA SPECIES AND ECOSYSTEMS		
<p>Clause 2.2, policy 12 Clause 3.14</p>	<p>KCE considers that the identification of taonga species and ecosystems, together with the establishment of measures to protect or manage the same, will lead to greater certainty for all. Without such certainty, costs and time involved in planning processes and consent applications can increase significantly, and taonga species and ecosystems can be exposed to the risk of damage. KCE supports early and clear identification of taonga species and ecosystems.</p>	<p>Nil</p>
7. IDENTIFYING ADVERSE EFFECTS		

Provisions	Submission	Relief Sought
<p>Clause 1.7(4)</p>	<p>KCE supports the inclusion of clause 1.7(4) which provides some guidance to the adverse effects that the pNPS IB is looking to address, however the adverse effects listed are of a highly general nature, and no indication of scale or thresholds is provided. As proposed, clause 1.7(4) provides a reference for what is meant when the other provisions of the pNPS IB refer to “<i>adverse effects on indigenous biodiversity</i>”. Given the general nature of the list, this creates significant uncertainty for regulators, landowners, the community and tangata whenua.</p> <p>KCE considers that if such a list is to remain as a point of reference, then it needs further development and inclusion of indicative thresholds of the scale at which an adverse effect is to be managed by the pNPS IB. Without such thresholds, KCE believes that clause 1.7(4) is too encompassing.</p> <p>KCE’s preference is that clause 1.7(4) be deleted and that it be recast as a guidance note.</p> <p>Further to the preceding submissions, KCE re-emphasises the concerns it raised in submission point 4.4 of this document. That is, together clause 1.7(4), the definition of the “<i>effects management hierarchy</i>” in clause 1.8, clause 3.9 “<i>Managing adverse effects on SNAs</i>”, and Appendix 2 “<i>Tools for managing effects on significant natural areas</i>” form a particularly restrictive regime which will likely prevent any activity, of any nature or scale, within an SNA. KCE understands that this is not the intention of the pNPS IB, particularly given objective 6(b)’s focus on allowing people and communities to provide for their social, economic and cultural wellbeing. The Company considers that deleting clause 1.7(4) (and shifting the content to a guidance note outside of the pNPS IB) would go some way to alleviating the unnecessarily restrictive requirements that result from the combination of clauses 1.7(4), 1.8 and 3,9, and Appendix 2.</p>	<p>18. Delete clause 1.7(4) and shift the content to a guidance note (KCE’s preferred relief); or</p> <p>19. If clause 1.7(4) is to remain within the pNPS IB, include associated thresholds for the scale of each adverse effect listed in clause 1.7(4).</p>

Provisions	Submission	Relief Sought
8. MANAGING ADVERSE EFFECTS ON BIODIVERSITY WITHIN SNAs		
<p>Clause .2, policy 6</p> <p>Clause 3.9</p> <p>Definition of ‘<i>effects management hierarchy</i>’</p>	<p>KCE is concerned with how potential effects of activities on SNAs are required to be managed. As proposed, clause 3.9 of the pNPS IB sets an absolute approach to managing adverse effects, based on the type of the effect rather than the scale of the effect. For example, clause 3.9(1)(a) effectively prevents any of the outcomes listed in clauses 3.9(1)(a)(i) to 3.9(1)(a)(iv) inclusive regardless of whether they can be shown to be of a less than minor scale.</p> <p>With respect to use of the “<i>effects management hierarchy</i>”, it too can result in unnecessary costs to landowners as it requires that adverse effects, regardless of their scale, be avoided “<i>where possible</i>”. KCE considers that while it may be “<i>possible</i>” to avoid a less than minor adverse effect, the costs may outweigh the benefits and to adopt the word ‘<i>possible</i>’ may not result in the greatest benefit to the environment or the community. As proposed clause 3.9 and the definition of the “<i>effects management hierarchy</i>” would require such avoidance and associated costs. KCE is concerned that as proposed, the pNPS IB could result in councils declining resource consent applications for activities regardless of whether the impact to indigenous biodiversity is less than minor, or where a better indigenous biodiversity outcome could be gained through offsetting or compensation. Thus, while the intent of the effects management hierarchy might appear to be reasonable, the Company considers that the practical implementation of the hierarchy, as proposed, is fraught.</p> <p>KCE considers that it is more appropriate to require avoidance where it is practicable (rather than where it is possible), as this allows for some comparison between the scale of the effect being avoided and the costs associated with avoidance.</p>	<p>20. Amend the definition of “<i>effects management hierarchy</i>” as follows:</p> <p><i>“means an approach to managing the adverse effects of subdivision, use and development, where the adverse effects are minor or greater, that requires that -</i></p> <p><i>a) adverse effects are avoided where <u>practicable possible</u>;</i></p> <p><i>b) adverse effects that cannot be demonstrably avoided are remedied where <u>practicable possible</u>;</i></p> <p><i>c) adverse effects that cannot be demonstrably remedied are mitigated;</i></p> <p><i>d) in relation to adverse effects that cannot be avoided, remedied or mitigated, biodiversity offsetting is considered; and</i></p> <p><i>e) if biodiversity offsetting is not demonstrably achievable for any indigenous biodiversity attribute on which there are residual adverse effects, biodiversity compensation is considered”</i></p>

Provisions	Submission	Relief Sought
9. MANAGING ADVERSE EFFECTS ON BIODIVERSITY OUTSIDE SNAs		
<p>Clause 2.2, policy 7 Clause 3.13</p>	<p>While KCE supports, in principle, maintaining indigenous biodiversity in areas beyond SNAs (as well as within SNAs), the Company considers that areas outside of SNAs should not be addressed by such broad provisions within the pNPS IB. Rather, such matters should continue to be provided for under the existing provisions of the Resource Management Act and associated local plans, and the pNPS IB should focus on those areas of greater importance, that is SNAs. If Policy 7 and clause 3.13 remain in the pNPS IB, significant uncertainty for landowners will be ongoing, and efforts with respect to maintaining (and where appropriate, enhancing) SNAs may be diluted.</p> <p>If clause 3.13 is to remain in the pNPS IB, then KCE is concerned that clause 3.13(1)(a) gives councils too much flexibility as to where, how and when they impose controls on indigenous biodiversity outside SNAs. While a flexible approach may well be considered useful for councils, it provides little certainty for resource users. For this reason, KCE considers that if clause 3.13 is to remain in the pNPS IB, then clause 3.13(1) should be amended to require councils to work with landowners, to identify indigenous biodiversity values outside of SNA's, and when setting controls on activities related to such areas.</p>	<p>21. Delete Policy 7 and clause 3.13.</p> <p>22. If clause 3.13 is to remain in the pNPS IB, then amend clause 3.13(1) as follows:</p> <p><i>“(1) Local authorities must <u>may</u> take steps to maintain indigenous biodiversity outside SNAs, including by <u>working with landowners, communities and tangata whenua to make or change making or changing</u> their policy statements and plans to do all the following:</i></p> <p><i>a) specify where, how and when controls on subdivision, use and development in areas outside SNAs are necessary to maintain indigenous biodiversity:</i></p> <p><i>b) apply the effects management hierarchy to adverse effects, except that biodiversity compensation may be considered as an alternative to biodiversity offsetting (and not only when biodiversity offsetting is not demonstrably achievable):</i></p> <p><i>c) specify where, how and when, for any area outside an SNA, the assessment and classification required by clause 3.8(1) is required.”</i></p>
10. PROVIDING FOR EXISTING ACTIVITIES IN SNAs		
<p>Clause 3.12</p>	<p>KCE considers that explicit consideration needs to be provided within the pNPS IB to the ongoing functioning and maintenance of existing nationally and regionally significant infrastructure. The</p>	<p>23. Add new clause 3.12(4A) as follows:</p> <p><i><u>“In regions and districts where nationally or regionally significant infrastructure is an existing</u></i></p>

Provisions	Submission	Relief Sought
	<p>requirements to manage the effects of activities on SNAs should not render such infrastructure unsafe or unusable.</p>	<p><u>activity, local authorities must ensure that their policy statements and plans recognise that -</u></p> <p><u>a) indigenous vegetation may regenerate in areas that have previously been cleared of indigenous vegetation for the purposes of establishing and maintaining such infrastructure; and</u></p> <p><u>b) the periodic clearance of indigenous vegetation as may be required for regular maintenance of such infrastructure should not be prevented; and</u></p> <p><u>c) consideration of effects (under Schedule 1 of the Act or through a resource consent application) may be required in the following circumstances:</u></p> <p><u>i) a proposed clearance is likely to have effects that are greater in character, intensity or scale than the adverse effects of clearance that has been undertaken as regular maintenance of the infrastructure; or</u></p> <p><u>ii) a clearance is proposed in an area that supports any threatened or at-risk species.”</u></p> <p>24. Add a new definition for nationally significant infrastructure as follows:</p> <p><u>“Nationally significant industry - means an economic activity based on the use of natural and physical resources, which has been shown to have benefits that are significant at a national scale. These may include social, economic or cultural benefits.”</u></p>

Provisions	Submission	Relief Sought
		<p>25. Add a new definition for regionally significant infrastructure as follows:</p> <p><u><i>“Regionally significant industry - means an economic activity based on the use of natural and physical resources in the region, which has been shown to have benefits that are significant at a regional scale. These may include social, economic or cultural benefits.”</i></u></p>
11. HIGHLY MOBILE FAUNA AREAS OUTSIDE SNAs		
<p>Clause 2.2, policy 13 Clause 3.15</p>	<p>KCE understands that policy 13 and clause 3.15 are intended to apply to highly mobile indigenous fauna, rather all highly mobile fauna, and therefore seeks that these provisions be amended to clearly reflect this.</p> <p>With respect to policy 13 and clause 3.15 (<i>“Highly mobile fauna”</i>) KCE understands that these requirements sit outside the planning content and timeframe requirements that address SNAs (as set in clauses 3.8 and 3.9 of the pNPS IB). KCE supports such an approach. While the identification and management of highly mobile indigenous fauna areas is considered important, the timeframes for such should be more lenient than for identification and management SNAs so that priority can be given to SNAs in the first instance. This recognises that many of the flora and fauna in SNAs will not be highly mobile and therefore will be less resilient to changes within SNAs. Further to this, KCE agrees with the commentary in the Discussion Document with respect to current information available on highly mobile indigenous fauna being incomplete and that councils often do not have the necessary information to actively manage such fauna. Given the requirements of clause 3.8 and clause 3.9, KCE considers that clause 3.15 will compound the limitations relating to access to sufficient expertise</p>	<p>26. Amend clause 3.15(1) as follows:</p> <p><u><i>“Highly mobile indigenous fauna areas</i></u> <u><i>Every regional council must work together with landowners and the territorial authorities in its region and those that it shares a jurisdictional boundary with to survey and record areas outside SNAs where highly mobile indigenous fauna have been, or are likely to be, sometimes present (in this clause referred to as highly mobile indigenous fauna areas).”</i></u></p> <p>27. That Central Government provide support to regional councils and territorial authorities to assist in resourcing the identification and management of highly mobile indigenous fauna areas outside of significant natural areas.</p>

Provisions	Submission	Relief Sought
	<p>to source the necessary information. In response, KCE considers that sufficient time is needed to accurately identify the habitat of highly mobile indigenous fauna prior to inclusion in plan provisions, and that this activity should not be rushed if it is to achieve the desired outcomes sought by the pNPS IB.</p> <p>With respect to clause 3.15(1), and as previously discussed, KCE considers that landowners hold a wealth of information about the flora and fauna present on their properties, and that councils should be required to work with landowners to benefit from such information, build transparency in the process and develop practical solutions.</p> <p>Further, while not wishing to see duplication across planning documents, KCE considers that it is appropriate for regional councils to work not only with those territorial authorities within its region, but also to work with those councils that share a boundary with the regional council. KCE notes that highly mobile indigenous fauna may move across a broad area that extends well beyond jurisdictional boundaries.</p>	
12. RESILIENCE TO CLIMATE CHANGE		
<p>Clause 2.2, policy 3</p> <p>Clause 3.5</p>	<p>KCE supports the focus provided in the pNPS IB for ensuring that indigenous biodiversity is resilient to the changing climate. However, the Company notes that this relies on good information being readily available to decision makers. The potential impacts of climate change on indigenous biodiversity are complex and often highly uncertain, which makes planning for them difficult. This can be compounded by a lack of regionally specific climate change data.</p> <p>KCE considers that work is needed to fill crucial information gaps and support the implementation of clause 3.5. While this will likely be costly, without the necessary information councils may impose</p>	<p>28. Retain policy 3</p> <p>29. Retain clause 3.5</p> <p>30. That further research be undertaken and provided to local government on climate change trends/predictions by region, and on the implications of such trends/predictions on local indigenous biodiversity. With this, that guidance be provided to local authorities on methods for maintaining ecological integrity through natural</p>

Provisions	Submission	Relief Sought
	<p>either unnecessarily restrictive planning provisions (which can result in unnecessary costs to landowners and resource users), or provisions that may not go far enough in ensuring that biodiversity is resilient to changes in the climate. KCE considers that guidance from central government will be crucial to support the integrated and effective implementation of policy 3 and clause 3.5.</p>	<p>adjustments of habitats and ecosystems to climate changes.</p>
13. PRECAUTIONARY APPROACH		
<p>Clause 2.2, policy 2 Clause 3.6</p>	<p>Effective implementation of policy 2 and clause 3.6 is reliant on councils understanding the precautionary approach and how it should be applied when assessing and managing the adverse effects of proposed activities on indigenous biodiversity. It is important that implementing the precautionary approach does not result in over regulation or unnecessary restrictions on subdivision, use and development. KCE is concerned that there is no specific guidance on how the precautionary approach is to be applied by local authorities when managing indigenous biodiversity.</p> <p>While policy 2 and clause 3.6 refer to both the uncertainty of effects and the potential significance of the effect, there is a risk that this provision, as proposed, is overused and applied to situations where the effects are not potentially significant. This concern relates to use of the word “<i>but</i>” as a part of the proviso for application of the precautionary approach rather than “<i>and</i>”. The wording proposed in the pNPS IB implies a different relationship to the requirement for both criteria to have been met before the precautionary approach is applied.</p> <p>The Company supports the section 32 report associated with the pNPS IB where it states that the core elements of the precautionary approach are that it should only be applied where:</p> <ul style="list-style-type: none"> • there is uncertainty; and • there is a threat of adverse effects; and 	<p>31. Amend policy 2 and clause 3.6 of the pNPS IB to read as follows:</p> <p>Policy 2</p> <p><i>“to ensure that local authorities adopt a precautionary approach towards proposed activities with effects on indigenous biodiversity that are uncertain, unknown, or little understood and the threat is of but potentially significant <u>adverse effects</u>:</i></p> <p>clause 3.6</p> <p><i>“Local authorities must adopt a precautionary approach toward proposed activities where -</i></p> <p><i>a) the effects on indigenous biodiversity are uncertain, unknown or little understood; <u>but and</u></i></p> <p><i>b) those effects are potentially significantly adverse.</i></p> <p><i><u>b) the threat is of potentially significant adverse effects.</u></i></p> <p><i><u>clause 3.6A</u></i></p>

Provisions	Submission	Relief Sought
	<ul style="list-style-type: none"> the threat of adverse effects is potentially significant. <p>Over use of a precautionary approach can lead to a higher burden on applicants to ‘prove’ the scale of potential effects, and this in turn can lead to unreasonable costs being borne by applicants and unnecessarily constrained development.</p> <p>KCE also supports the section 32 report where it notes that application of the precautionary approach may include adoption of an adaptive management approach, or declining a resource consent application in certain circumstances; and the section 32 report also notes that policy 2 and clause 3.6 should not be used to impose stringent consent conditions or monitoring requirements, or as a basis to decline resource consent applications, where the potential adverse effects are unlikely to be significant. These details are not explicit in policy 2 or clause 3.6, and KCE considers that if specific reference is to be made to adoption of the precautionary approach with the pNPS IB, then such details should also be explicit.</p>	<p><i><u>The application of the precautionary approach may include the adoption of adaptive management methods.”</u></i></p> <p>32. If policy 2 and clause 3.6 are to be retained within the pNPS IB, in addition to adopting the preceding relief sought, KCE seeks the provision of robust guidance to local authorities on implementing the precautionary approach.</p>
14. RESTORATION AND ENHANCEMENT		
<p>Clause 2.1, objective 5 Clause 2.2, policy 11 Clause 3.16</p>	<p>KCE supports the inclusion of objective 5, policy 11 and clause 3.16; however, as proposed, the Company considers that objective 5 and policy 11 are too broad and may lead to overly restrictive provisions local planning requirements. KCE considers that while enhancement and restoration may be warranted in some instances, it is not always necessary.</p> <p>Further to the preceding submission, KCE notes that the implementation provisions for objective 5 are largely focused on promoting and incentivising restoration and enhancement actions rather than regulating for the same. KCE supports this approach and notes that in the Company’s experience, adopting purely regulatory-focused solutions to protect indigenous biodiversity can</p>	<p>33. Amend objective 5 as follows: <i>“to restore indigenous biodiversity <u>where it is degraded</u> and <u>thereby</u> enhance the ecological integrity of ecosystems”</i></p> <p>34. Amend policy 11 as follows: <i>“to provide for the restoration and enhancement of specific areas and environments, <u>where they are degraded</u>, that are important for maintaining indigenous biodiversity</i></p> <p>35. Amend clause 3.16(5) as follows:</p>

Provisions	Submission	Relief Sought
	<p>lead to landowner resistance and opposition to indigenous biodiversity protection and enhancement efforts.</p> <p>However, clause 3.16(5) highlights that an incentivised approach to restoration and enhancement will be particularly important on Maori land, in recognition of the opportunity cost of retaining indigenous biodiversity on that land. KCE agrees with this position, but notes that other landowners also face significant opportunity costs associated with maintaining indigenous biodiversity, and accordingly the Company considers that this clause should be amended so that it does not provide specific recognition of any particular landowner type.</p>	<p><i>“In areas to which this clause applies, local authorities may provide incentives for restoration and enhancement and in particular on Māori land, in recognition of the opportunity cost of maintaining indigenous biodiversity on that land.”</i></p>
15. INTEGRATED APPROACH		
<p>Clause 2.1, objective 4 Clause 2.2, policy 4 Clause 3.4</p>	<p>KCE considers that it is critical that an integrated approach to managing indigenous biodiversity be adopted, both in terms of ecological integration (i.e. ki uta ki tai) and in terms of integration between administrative bodies. KCE considers that an integrated approach will:</p> <ul style="list-style-type: none"> • assist in establishing clear roles and responsibilities between councils; and • allow for the pooling of information; and • foster partnerships and sound relationships between local authorities and broader parties; and • lead to a more consistent approach for the management of indigenous biodiversity, both across local authority boundaries and across terrestrial, freshwater and coastal environments. <p>However, KCE is concerned that clause 3.4(c), as currently written, is vague and is more appropriate as a guidance note than being a requirement within the pNPS IB. If it is to remain in the pNPS IB,</p>	<p>36. Retain objective 4. 37. Retain policy 4. 38. Either, delete clause 3.4(c); or 39. Amend clause 3.4(c) as follows: <i>“<u>recognising and coordinating with considering the indigenous biodiversity requirements of strategies and other planning tools required by, or provided for in, legislation and relevant to indigenous biodiversity</u>”</i> 40. Further to the preceding submission, amend clause 3.4(c) to identify the specific strategies and planning tools that this clause applies to.</p>

Provisions	Submission	Relief Sought
	then KCE considers that it needs to be strengthened by requiring recognition of, and coordination with, other strategies and planning tools related to indigenous biodiversity (not just consideration of such documents), and by identify the specific strategies and planning tools that this clause applies to.	
16. TIMEFRAMES		
<p>Clauses 1.5(3) to 1.5(5) inclusive</p> <p>Clauses 3.8(3) to 3.8(8)</p> <p>Clause 3.18</p>	<p>As previously discussed, a number of timeframes are set in the pNPS IB and are required to be met by local councils, for example:</p> <ul style="list-style-type: none"> a) Plan and regional policy statement changes are required by the pNPS IB to be notified by the 31st of December 2028 (clause 1.5(3)); b) Territorial authorities must have identified and classified the significant indigenous vegetation and/or significant habitat of indigenous fauna within 5 years of the commencement of the pNPS IB (clause 3.8(3)); c) Where areas of significant indigenous vegetation and/or significant habitat of indigenous fauna have previously been identified by councils they must, within 3 years of the commencement of the pNPS IB, be assessed “by a suitably qualified ecologist” as complying with Appendix 1 of the pNPS IB (clause 3.8(4)); and they must be classified as being High or Medium (in accordance with Appendix 2) within 5 years of the commencement date (clause 3.8(5)); d) Territorial authorities must notify any plan or plan change necessary to map areas of significant indigenous vegetation and/or significant habitat of indigenous fauna within 6 years of commencement of the pNPS IB (clause 3.8(6)); and every 2 years after this every territorial authority must notify a plan change to add any areas that have been identified as SNAs as a result of resource consent application, notice of requirement or other means (clause 3.8(8)); 	<p>41. Add new clause 5 as follows:</p> <p><u><i>a) This clause applies to the implementation of this national policy statement by a local authority.</i></u></p> <p><u><i>b) A local authority may extend the dates in this national policy statement that apply to it if it considers that:</i></u></p> <ul style="list-style-type: none"> <u><i>i. meeting that date would result in lower quality planning; or</i></u> <u><i>ii. it would be impracticable for it to complete the required implementation by that date.</i></u> <p><u><i>c) any extension of a timeframe made under subclause b) must not be more than twice the timeframe for the same requirement as set elsewhere in this national policy statement.</i></u></p> <p><u><i>d) Where a local authority is satisfied that a date should be extended, it may implement the associated requirement by a programme of defined time-limited stages.</i></u></p>

Provisions	Submission	Relief Sought
	<p>e) Every 10 years territorial authorities must update district plans (clause 3.8(7)) including the identification of significant indigenous vegetation and/or significant habitat of indigenous fauna; and</p> <p>f) 6 years following the commencement of the pNPS IB, regional councils are required to have a regional biodiversity strategy in place (clause 3.18(4)).</p> <p>As previously discussed, each of these processes and timeframes require specialist ecological expertise. KCE is concerned that there is not enough of the necessary expertise available within New Zealand to meet these requirements, and in the absence of such expertise the robustness of identification and management of SNAs will be considerably compromised. Given the importance of maintaining indigenous biodiversity, while at the same time not imposing unnecessary costs on landowners, KCE seeks the inclusion of a clause equivalent to Section E of the NPS FM.</p>	<p><u><i>e) Any programme of time-limited stages is to be formally adopted by the local authority by 31 December 2021 and to be publicly notified.</i></u></p> <p><u><i>f) Where a local authority has adopted a programme of staged implementation, it is to publicly report, in every year, on the extent to which the programme has been implemented.</i></u></p>
17. IMPLEMENTATION GUIDANCE AND SUPPORT		
All provisions.	<p>In a number of the preceding submissions, KCE has sought the provision of guidance material to local authorities to assist in the implementation of the pNPS IB. In addition to these submissions, KCE seeks that all guidance material developed (either as proposed in the pNPS IB or as requested in KCE's submissions) is done so by independent panels of experts relevant to the guidance being developed, and that there is an opportunity for landowners and other parties who may be affected by such guidance to provide feedback to draft versions.</p> <p>Further to the provision of guidance material, KCE considers that central government funding may be needed to ensure that local government, landowners, communities and tangata whenua can fully engage in implementation of the pNPS IB. KCE seeks the</p>	<p>42. That guidance material be developed and provided as sought within KCE's submissions.</p> <p>43. That all guidance material (either as proposed in the pNPS IB or as requested in KCE's submissions) is developed by a suitably qualification panel of experts; and that a draft version of the guidance material is made available to the public for feedback prior to being finalised.</p> <p>44. The establishment of a central government fund to ensure that local government, landowners, communities and tangata whenua can fully engage in implementation of the pNPS IB; and that the fund have defined application</p>

Provisions	Submission	Relief Sought
	establishment of such a fund, with defined application timeframes and processes, and criteria for assignment of funds.	timeframes and processes, and criteria for assignment of funds.