



Waiau Rivercare Group Inc.

The Chief Executive

Ministry for the Environment

Wellington

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SUBMISSION ON THE PROPOSED NPSIB FROM THE WAIAU RIVERCARE GROUP INC

The Waiau Rivercare Group (WRG)

1. Thank you for the opportunity for the WRG to submit on the proposed NPSIB.
2. The WRG is a community organisation based in the Waiau Valley in Western Southland. It is one of 23 “catchment groups” established within the Southland Region. The WRG has a current membership of 420. Its membership is drawn from both the farming community and the local townships of Tuatapere and Te Anau and is augmented by some others who *whakapapa* back to the Waiau even though they may now live elsewhere.
3. The WRG’s area of geographical focus centres on the Waiau Freshwater Management Unit (FMU). While that focus had its genesis with the proposed Southland Water and Land Plan (pSWLP) – the Southland Regional Council’s response to the National Policy Statement on Freshwater Management (NPSFM) which is currently under appeal¹ in the Environment Court²- the WRG has embraced *Ki uta ki tai*³. As such our remit extends beyond the waterbodies within the FMU and properly includes all terrestrial life.

¹ ENV – 2018 -(CHC)

² The WRG was granted standing before the Court on 14 November 2018 and has filed a number of section 274 Notices in support of appeals by Aratiatia Livestock Ltd, Southland Fish and Game, Forest and Bird, Dept of Conservation, Southland Federated Farmers Nga Rununga, and in opposition to an appeal lodged by Meridian Energy Ltd.

³ Literally from the mountains to the seas – but we prefer the Ngai Tahu ki Murihiku view : “to stand on the land and know the effects both positive and negative in every direction” – Second Report to the Southland Regional Council and Te Ao Marama of the Southland Regional Forum, March 2020

ko au te awa, ko te awa ko au

I am the River and the River is me

The Proposed NPSIB

4. For the most part the WRG supports the stated intention of the proposed NPS to provide an enhanced level of protection for indigenous biodiversity.
5. The WRG does not support the principle of allowing for biodiversity offsets. However, if the offset tool is to be retained, we suggest that the requirements in Appendix 3 be strengthened, particularly point 6 - Landscape Context. The phrase,

'preferably close to the location of development or within the same ecological district'

Is in our view, not stringent enough. An alternative might read,

'as close as practicable to the location of development and within the same ecological district.'

6. We are concerned with the absence of freshwater biodiversity from the draft NPSIB, other than Biodiversity Strategies and wetland restoration and enhancement. In our view there is a pressing need for specific protections in the draft NPSIB.
7. It is of particular concern to the WRG that while there appears to be quite strong protection in the NPSIB for terrestrial SNA⁴s (avoid effects in most instances) the same protections do not seem to be extended to their wetland equivalents. While there are protections in the draft NPSFM around wetlands, particularly section 3.15 of the 2019 draft NPSFM, Section 3.15(4) of the draft NPSFM requires the effects hierarchy to be applied – “avoid, remedy then mitigate” a less stringent requirement than simply 'avoid'.
8. While there is the requirement for regional councils to consider indigenous biodiversity in waterbodies (including wetlands) when preparing mandatory Regional Biodiversity Strategies, in our opinion the that is a fairly weak requirement. The rather loose requirements of the Biodiversity Strategy outlined in Appendix 5 (both in terms of content and process), and the fact that Appendix 5 requires Councils only to 'have regard to' the Biodiversity Strategy when preparing Policy Statements and Plans under the RMA, we believe risk rendering Biodiversity Strategies largely toothless.
9. We submit that rather than '**have regard to**' in Appendix 5, Biodiversity Strategies would be strengthened by requiring Regional Councils to, '**give effect to**' their Biodiversity Strategies in their Regional Policies and Plans. This change would add significant regulatory weight to Biodiversity Strategies. Consequently, we suggest that a more thorough engagement process with landowners and the wider community, in the preparation of the Biodiversity Strategies would be appropriate within Appendix 5.

⁴ SNA -Significant Natural Area

10. Overall, our preference would be for biodiversity in freshwater bodies to be included explicitly in the NPSIB rather than leaving it up to the NPSFM. The NPSFM has as its primary focus water quality and quantity. Those criteria are recognised as key determinants of ecosystem and human health. We submit that while the NPSFM lens is complimentary, it is not the same as a focus on indigenous biodiversity. The WRG is concerned that without a specific focus on indigenous biodiversity in the freshwater space we risk it being overlooked, even if protection of that biodiversity does happen to be a side-effect of some of the NPSFM provisions.
11. We agree that there is a pressing need for the staff within our TA⁵s to be upskilled in identifying SNAs. A case could be made for this function within the local authority framework to be shifted to Regional Councils. Our experience of Southland's TAs and Regional Council suggests that SNA identification and assessment would be a more natural fit with our Regional Council. The WRG members are for the most part rate payers within the Southland Region and District. We were surprised to learn⁶ that the Southland District Council (SDC) had estimated the cost of compliance with the proposed NPSIB at \$18m. Of that sum, the Council estimates \$9m would be required to assess and identify what could be as many as 3000 sites that could qualify as SNAs. Those estimates seem on the face to be high, but if correct the WRG would strongly suggest that SDC should give some thought to creating a contestable fund to which public and private service providers might tender for assessment work.
12. We are particularly attracted to the concept of using positive measures to incentivise landowners to protect indigenous biodiversity – our experience is that the “carrot” approach is generally underutilised by both central and local Government. Landowners, whether they be urban and rural need clarity around the steps they can take to nurture indigenous biodiversity. For rural landowners who face the added complication of operating businesses, that clarity will provide a measure of certainty that would be beneficial.
13. Finally, with respect to electricity generation, Section 3.9(2) proposes that significant leniency be extended to land use, subdivision and development for electricity generation, where adverse effects result.
14. The draft NPSIB proposes that such effects must be managed using the **'effects management hierarchy'** (avoid, then remedy, then mitigate etc) as opposed to the strict 'avoid' as is the case for other activities. The WRG is disappointed with that proposal. In our view, it is not acceptable for yet another NPS (in this case the NPSIB) to be made subordinate to the NPSREG⁷.

⁵ TAs – Territorial Authorities

⁶ Stuff Southland Times, 4 March 2020 – “Southland District Council could face \$18m bill for proposed national biodiversity policy”,

⁷ NPSREG -National Policy Statement on Renewable Energy Generation.

15. In our FMU it is already too late – in effect the NPSIB proposal is already the reality in the Waiau Catchment. The High Court⁸ determined that the Manapouri Te Anau Development Act (MTADA) 1963, effectively sits in place of a land use consent where the use is 'necessary and requisite' for the generation of electricity. The result is that the protection of indigenous biodiversity by the generator will always be subordinate to the generation imperative. We urge the Minister for the Environment not to leave indigenous biodiversity in other catchments exposed to the whims of other electricity generators.

Yours faithfully

Peter Horrell

Paul Marshall

Co Chairs
Waiau Rivercare Group Inc

⁸ Meridian Energy Limited v Southland District Council [2014] NZHC 3178