

SUBMISSION ON THE DRAFT NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

14 March 2020

SUBMITTER DETAILS

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INTRODUCTION AND BACKGROUND

1. Upper Hutt City Council (Council) thanks the Ministry for the Environment and the Department of Conservation for the opportunity to make this submission on the Draft National Policy Statement for Indigenous Biodiversity (Draft NPS-IB).
2. Maintaining the health of indigenous biodiversity in Upper Hutt City is important to the City and its residents. The maintenance and enhancement of the natural environment is a highly valued part of the Upper Hutt community's values.
3. Council officers from Hutt City, Upper Hutt, Kāpiti Coast, Porirua, Wellington City, and the Greater Wellington Regional Council, met to discuss the implications of the Draft NPS-IB, as we are all at various stages of identifying and protecting significant natural areas under Wellington Regional Policy Statement 2013 criteria (Policy 23). The attendance of officials from both government departments at this discussion was very useful to assist in formulating our respective submissions.
4. This submission has been approved by Council at its meeting of 9 March 2020

SUBMISSION

High-level comments

5. Council supports the general intent of the Draft NPS-IB, namely identification and protection of significant natural areas (SNA) and greater protection for biodiversity in general. The Draft

NPS-IB provides national direction on implementation of section 6(c) of the Resource Management Act that has long been sought by local government. Council supports the inclusion of the resilience to climate change in this NPS.

6. National policy statements are a critical tool to guide the preparation of regional and district plans to achieve the purpose of the RMA. However, in light of the national discussion currently underway regarding the length and complexity of the RMA itself, Council has concerns about the length and complexity of recently issued proposed and draft national policy statements.
7. Rather than fulfilling their original purpose of guiding the content of planning documents, each new national policy statement is getting progressively longer, and much broader in scope.
8. The Draft NPS-IB in addition to directing the content of district and regional plans, requires councils to: draft biodiversity strategies, draft monitoring plans, and monitor revegetation targets. These are matters that would be better suited to being issued as non-statutory guidance.
9. Council supports the requirement for regional biodiversity strategies, but questions if the Draft NPS-IB is correct vehicle for this and prefers that the National Biodiversity Strategy direct the development of a regional strategy.
10. Council considers that as a general principle, national policy statements should be drafted to focus on achieving core outcomes (i.e. in this instance identification and protection of significant natural areas through district plans). More focussed national policy statements would be less open to interpretation and therefore more legally robust.
11. There is the potential for significant conflict and overlap between this NPS and the Proposed NPS-HPL, Proposed NPS-UD and Proposed NPS-FM and proposed changes to the RMA. If all national direction is implemented as currently drafted it will be very difficult for decision makers to assess all of these conflicting requirements when making decisions on resource consents or plan changes. An example of this is the requirement in the Proposed NPS-UD to 'make room for growth (up and out)' and the requirement in the NPS-UD to map and protect 'highly mobile fauna areas' would likely conflict as many potential areas for urban development are possible' highly mobile fauna areas'.
12. Therefore, Council is concerned the layers of complexity and ambiguity that this NPS-IB will create as presently drafted, with resulting financial, legal, and timing implications for Council. An example of this complexity is the highly mobile fauna areas discussed further in point 21 below.

Detailed comments

Tangata whenua engagement

13. Council is broadly supportive of these requirements. Incorporation of mātauranga Māori is an important part of the successful management of indigenous biodiversity.
14. However, there needs to be clear guidance for how to implement the Hutia Te Rito concept, with tangible examples. Resourcing and guidance is also needed for councils, as well as for

iwi to fully participate. The council also seeks that any directive provisions ensure that consultation with tangata whenua is meaningful and the information provided by tangata whenua has weight in decision making.

Identification of significant natural areas

15. Council supports terrestrial significant natural areas being scheduled in district plans, as this falls within territorial authority functions under the s31(1)(b)(iii) of the RMA. Council notes that any of the Draft NPS-IB implementation requirements require a joint process for territorial and regional authorities to identify, protect and restore indigenous biodiversity. This sort of collaborative process can be very resource intensive and inefficient.
16. Council also supports applying the mitigation hierarchy principles, which are internationally established best practice. Council supports the use of appendices which provide guidance on the intended outcomes for offsetting, compensation and the mitigation hierarchy.
17. However, Council considers that the identification of multiple types of SNAs within district plans will be challenging to implement.
18. The Draft NPS-IB directs councils to identify five types of indigenous habitat: 'high' and 'medium' SNAs (part 3.8 and Appendix 2), 'plantation forest biodiversity areas' (3.10), areas of 'indigenous biodiversity outside SNAs' (3.13), and 'highly mobile fauna areas' (3.15).
19. The classification of SNA values as 'medium' or 'high' is a new concept which will be open to interpretation, debate and litigation. Most councils in New Zealand have identified one level of significance for significant natural areas (i.e. either significant or not). This includes all councils operating under the Wellington Regional Policy Statement 2013. In our case, the desktop assessment to identify SNAs covering 37,180 hectares of land has taken 18 months. The draft assessment identifies 18 percent of the SNAs as being on private land. Public engagement, including letters to affected landowners, public open days and an online web map are proposed for April-May 2020. The SNAs are intended to be included to be included in a plan change to be notified by the end of 2020. It is very likely that most, if not all, of these draft SNA sites would meet the test as high value sites, as the criteria is one high value means the site is high value. The consequence of this is that landowners would need resource consent for many vegetation maintenance activities.
20. We have been advised by our ecologists that the draft SNAs cannot be easily updated to the Draft NPS-IB criteria, as the split between medium and high is not possible to determine from our existing desktop review and would require significant additional field work, beyond the level we will undertake as part of our landowner engagement. All landowners would need the opportunity to request a site visit by an ecologist as it would only be fair to give them the chance to refine the assessment as it relates to their property (especially with the regulatory implications of the high category). This extra field work would take significant time and resources, and would adversely impact our district plan review timeline and budget.

21. Identification and protection of 'highly mobile fauna' (part 3.15) would be particularly problematic for Council. The direction appears unworkable, and well beyond council resourcing and expertise. Depending on the survey results this may be particularly challenging, for example if it leads to a requirement for plan provisions restricting the removal of exotic trees. It is also not clear what 'highly mobile fauna' includes e.g. flying insects and terrestrial species such as geckos. An example is the kārearea (NZ Falcon) which has potential feeding and nesting habitat in a wide range of urban and peri-urban environments including indigenous and exotic forest areas and open farmland within Upper Hutt. It would be very difficult and costly to identify and map all potential habitat for these birds in the City as it would be almost everywhere.
22. Some of the strong directive requirements, such as the requirement to avoid the loss of ecosystem extent and buffers (Under Clause 3.9 (1) (a)(i) & (ii)) are likely to expose territorial authorities to legal proceedings under RMA section 85 (plan provisions rendering land incapable of reasonable use). This is likely to occur when territorial authorities are meeting their obligations under NPS-IB Clause 3.8 to identify and map SNA's in their district plan via a RMA Schedule 1 process. Due to the natural justice issues associated with being required to implement the NPS-IB but also being liable to pay compensation for having done so, the Council requests this risk to local authorities be eliminated.
23. Furthermore, as most activities will require resource consent anyway, the categorisation of high versus medium is unnecessary given ecological assessments will be undertaken as part of the resource consent process and the mitigation hierarchy will be applied to decision making.
24. The proposed classification requirements make the policy statement unduly complex. A refined approach of simply requiring identification of SNAs and requiring assessment of environmental effects through the mitigation hierarchy would be sufficient and achieve the same biodiversity benefits.
25. Council opposes the principle of disregarding 'artificial margins such as property boundaries' when identifying SNA (part 3.8(2)(f)). Our experience suggests a need for some pragmatism towards aligning with property boundaries where there are only minor and ecologically insignificant slivers of indigenous vegetation within a property.

Protection of SNAs in district plans

26. As noted above, Council supports the intent of the Draft NPS-IB to protect SNAs through district plan provisions.
27. However, Council has significant concerns with how restrictive this direction is as drafted. The Draft NPS-IB has an "avoid" policy in the first instance which means that the starting point for most activities within SNAs would be a non-complying activity. Given how many areas are likely to meet the threshold for significance under part 3.8, Council considers that this is overly restrictive. For example if resource consent is required for the maintenance of vegetation in High SNAs and these are common in the City there will be a significant cost to both Council and landowners.

28. Most development within SNAs would be restricted to 'medium' rated areas. But even here the inclusion of 'and' at the end of each clause (part 3.9(2)) would mean that it is very difficult to undertake any activity without the need for resource consent.

29. Council considers that it is critical to be able to permit certain activities within SNAs. SNAs often contain essential infrastructure such as power lines, driveways, and tracks that need to be maintained to operate safely. Likewise, buildings and structures need to have an area immediately around them clear for maintenance, including allowing light to enter dwellings. It is not clear within the Draft NPS-IB if these types of activities can be permitted in district plans within the majority of SNA's as drafted. We consider that they should be to ensure the regulations are practical and allow for reasonable property maintenance.

30. Council considers that the direction on managing effects within plantation forests (part 3.10) may overcomplicate the management of these areas. Council considers that the National Environmental Standards for Plantation Forestry are sufficient to manage the effects of this activity.

31. Part 3.16 requires policies and rules in district plans for restoration of "former wetlands" being those that "no longer retain their indigenous vegetation or habitat but with regeneration could be regained". Council considers that this is vague and uncertain, and it is unclear how this sits with rest of the Draft NPS-IB i.e. is it deemed offsetting or compensation? This also competes and possibly conflicts with 3.12 which seeks to recognise existing pastoral farming areas and provides farmers with the ability to regularly clear regenerating vegetation.

32. Under Part 3.19, it appears that anytime there is native vegetation or fauna on a site, councils would be obliged to request a full ecological assessment of the area to confirm if it was/was not an SNA. If this is the case, it would mean that every resource consent application in the country would require an assessment by an ecologist, as the vast majority of sites in New Zealand have some form of native vegetation. There would be significant financial implications for landowners and developers, while also resulting in an enormous resourcing constraint on suitably qualified ecologists.

Monitoring

33. Council supports the general concept of national targets for increasing indigenous vegetation cover (part 3.14) being monitored by regional councils.

34. However, Council considers more guidance is required around the general implementation of this policy (and the scientific basis for the 10% figure). For example, it is unclear how the urban/rural boundaries should be determined.

Implementation support

35. Council considers that substantial Government resourcing will be required to effectively implement the Draft NPS-IB. From the regulatory impact statement, it appears that total guidance and support costs will only amount to around \$1.77-2.65m, which is likely well short of what will be required for successful implementation. For this to be really effective it will need substantial additional resources to be available to landowners and councils to implement the NPS including funds to purchase land that is 'incapable of reasonable use', provide for legal and consultant costs and enable effective incentives.

36. Council has grave concerns around the integration of the recently released national policy statements, including how they relate to each other, and their relationship with Part 2 of the RMA. This is compounded through potential RMA reform indicated in the "RMA issues and options" consultation. There is potential for significant conflicts between the draft NPS and other national direction especially in relation to providing for urban development capacity. There needs to be clarity about how to prioritise national direction to resolve these conflicts.

37. Council requests clear guidance in this respect to assist with implementing national direction, and to provide certainty for development in urban areas in particular.

Next steps

38. Council welcomes the sharing of information with the Ministry with regards to its SNA information and available data to assist in the Ministry's understanding of local implications.

ENDS