

**SUBMISSION ON HE KURA KOIORA I HOKIA: PROPOSED NATIONAL POLICY STATEMENT
FOR INDIGENOUS BIODIVERSITY**

EXECUTIVE SUMMARY

1. NZ Airports welcomes the opportunity to submit on "*He Kura Koiora i Hokia: Discussion Document on the Proposed National Policy Statement for Indigenous Biodiversity*" and the draft National Policy Statement for Indigenous Biodiversity ("**Draft NPS-IB**").
2. NZ Airports generally supports the objective of the Draft NPS-IB to prevent further loss of New Zealand's indigenous biodiversity. However, as currently drafted, the Draft NPS-IB would impose unreasonable constraints on the safe and efficient ongoing operation of New Zealand's airports.
3. In summary, NZ Airports seeks to:
 - (a) amend Objective 6 in order to provide for the continued operation of nationally significant infrastructure, to make the objectives and policies consistent with the rest of the Draft NPS-IB;
 - (b) amend the definition of nationally significant infrastructure to fully capture significant airports across New Zealand;
 - (c) amend the definition of "Significant Natural Areas" ("**SNAs**") to exclude the ability for SNAs to be identified by assessments of environmental effects ("**AEEs**") in resource consent applications;
 - (d) amend the definition of "effects management hierarchy" to require adverse effects to be avoided "where reasonably practicable" rather than "where possible";
 - (e) amend section 3.9 to apply the exception for nationally significant infrastructure to *all* SNAs (not just medium value SNAs), in reflection of the broad range of SNAs which will be captured as high value under the current framework;
 - (f) amend section 3.12 to ensure the existing activities of nationally significant infrastructure are enabled to continue, even where they change in scale, character and intensity, in order to make this consistent with the Draft NPS-IBs provisions for new activities at section 3.9;
 - (g) amend the definition of "existing activities" to capture activities which have been consented but which are partially or not yet implemented; and
 - (h) require local authorities to undertake early consultation with landowners and significant activities that neighbour areas proposed to be subject to policies and rules seeking to restore or enhance SNAs, or increase indigenous vegetation.
4. We address each of these matters in turn below.

NZ AIRPORTS – WHO WE ARE

5. NZ Airports is the industry association for New Zealand's airports and related businesses. Its members¹ operate 41 airports across the country, including the international gateways to New Zealand and the domestic airports making up the national air transport network. This infrastructure is essential to a well-functioning economy and the wellbeing of our communities.
6. NZ Airports' members have extensive experience dealing with resource management processes and issues, and in particular with managing the environmental effects that can arise from the operation, maintenance and development of New Zealand's airports.
7. NZ Airports has provided a range of feedback on resource management and related reforms in the past, most recently the Resource Management Amendment Bill, the Issues and Options Paper, the Urban Development Bill and the Action for Healthy Waterway reforms. Its members have also been closely involved in extensive plan review processes in Auckland, Christchurch, and Queenstown, along with other regions and districts throughout New Zealand.

AIRPORTS AND INDIGENOUS BIODIVERSITY

8. Like many large-scale infrastructure operators in New Zealand, airports interact with indigenous flora and fauna in multiple ways. As airports grow and expand to meet both domestic and international demand for air travel, their activities can conflict with existing indigenous ecosystems, habitats and migratory areas. The need to effectively manage potential safety risks around airports can also have impacts on both indigenous flora and fauna. This may include the management of flood risks or the clearing of trees to enable aircraft safety and avoid or reduce the potential for bird strike issues from birds settling in neighbouring forest, freshwater or coastal habitat. Failure to properly manage these issues has the potential to seriously undermine the safety and ongoing operation of our member airports.
9. When it comes to the management of these conflicts, airports have less flexibility than many other activities. Runways and aircraft activities require flat, open space with clear visibility. Airports are also constrained by Civil Aviation Act 1990 ("**CAA**") requirements and safety guidelines to minimise, control, and avoid the restoration of flora and fauna to avoid matters like bird strike, particularly around runway approaches. While airports strive to manage adverse effects on indigenous flora and fauna as far as practicable, the requirements of aviation safety and security can mean that, in some cases, airports cannot avoid effects on local ecosystems and habitats.
10. There are also a range of other considerations that must be taken into account and balanced in determining the location of airport infrastructure. These include noise effects on neighbouring properties, the establishment of necessary infrastructure such as transport links, maintenance and service facilities and stormwater facilities as well as geotechnical and other engineering considerations. In addition, the expense involved in shifting an airport's entire operations from an existing location to another would, in most cases, simply not be feasible from a practical or economic perspective.

¹

Our member airports include Ardmore Airport, Ashburton Airport, Auckland Airport, Chatham Islands Airport, Christchurch Airport, Dunedin Airport, Gisborne Airport, Hamilton Airport, Hawke's Bay Airport, Hokitika Airport, Invercargill Airport, Kapiti Coast Airport, Kaikohe Airport, Katikati Airport, Kerikeri Airport, Marlborough Airport, Masterton Airport, Matamata Airport, Motueka Airport, Nelson Airport, New Plymouth Airport, Oamaru Airport, Palmerston North Airport, Queenstown Airport, Rangiora Airport, Timaru Airport, Rotorua Airport, Takaka Airport, Taupo Airport, Tauranga Airport, Wairoa Airport, Wanaka Airport, Whanganui Airport, Wellington Airport, West Auckland Airport, Westport Airport, Whakatane Airport, and Whangarei Airport.

11. While the management of indigenous biodiversity is a key environmental objective, which NZ Airports supports, this must be balanced against the functional and operational needs of airports, as regionally and nationally significant infrastructure, and the safety of the flying public.

OBJECTIVES AND POLICIES

12. NZ Airports generally supports the objectives and policies of the Draft NPS-IB. Specifically, we support the recognition in Policy 8 that many land uses are constrained to particular locations and cannot always shift to areas where they will not affect indigenous flora and fauna. In addition, we support Policy 10's consideration for existing activities that have developed under the current environmental planning framework, where these may conflict with indigenous biodiversity concerns.
13. However, we consider amendment is required to ensure the objectives and policies are consistent with the recognition elsewhere in the Draft NPS-IB,² that nationally significant infrastructure must be provided for so it can continue to efficiently and safely operate and contribute to the wellbeing of the communities it services. As such, we recommend the following addition to Objective 6:

Objective 6: to recognise the role of landowners, communities and tangata whenua as stewards and kaitiaki of indigenous biodiversity by

- a) allowing people and communities to provide for their social, economic and cultural wellbeing now and in the future; and
- b) supporting people and communities in their understanding of and connection to, nature; and
- c) ensuring the continued operation of nationally significant infrastructure.

DEFINITION OF "NATIONALLY SIGNIFICANT INFRASTRUCTURE"

14. NZ Airports submits that the Draft NPS-IB's current definition of "nationally significant infrastructure" is unduly narrow, with the effect being that many of New Zealand's smaller airports will not receive the benefit of the protections provided for such infrastructure in the Draft NPS-IB.
15. The Draft NPS-IB defines "nationally significant infrastructure" as including "airports used for regular air transport services by aeroplanes capable of carrying more than 30 passengers".³ This definition reflects that provided under the Civil Aviation Authority Rules, Part 139, for airports that meet the requirements for aerodrome certification.⁴ It is also in line with the definition used in the recent *Action for Healthy Waterways* documents and the Urban Development Bill.
16. As NZ Airports has submitted in relation to other policy documents and legislative reforms, this definition does not capture all of those airports that are either requiring authorities under the RMA and / or are considered "significant assets" of local authorities under the Local Government Act 2002.⁵ Incorporation of these definitions has been consistently sought by NZ Airports, in order to capture those airports that, while not necessarily providing regular connections to other airports in New Zealand, are significant to future local authority planning and for the provision of services to their local communities, particularly in smaller centres.

2 See section 3.9.

3 Section 1.8.

4 Civil Aviation Rules, Part 139, Subpart B – Certification Requirements, at 139.51(b).

5 Local Government Act, Section 5.

17. To remedy this gap in the Draft NPS-IB, NZ Airports seeks that either:
- (a) the Draft NPS-IB's definition of "nationally significant infrastructure" be amended as follows:

nationally significant infrastructure means any of the following:

[...]

- (g) airports that:
- (i) have a runway that is used for regular air transport services by aeroplanes that have a seating configuration of more than 30 passenger seats; or
 - (ii) are requiring authorities under the Resource Management Act 1991; or
 - (iii) are significant assets of local authorities under the Local Government Act 2002.

- (b) or, in the alternative, all references to "nationally significant infrastructure" are amended to read "regionally or nationally significant infrastructure", with a corresponding amendment to section 1.8 to provide a new definition of "regionally significant infrastructure" as follows:

regionally significant infrastructure means any of the following:

[...]

- (X) airports that are requiring authorities under the Resource Management Act 1991 or significant assets of local authorities under the Local Government Act 2002.

18. In the following sections, NZ Airports' other concerns with the Draft NPS-IB are outlined in further detail. Where "nationally significant infrastructure" is referred to below, it should be read in the context of the broader definition sought by NZ Airports', to ensure that it appropriately captures all of our member airports.

IDENTIFYING SNAS

19. NZ Airports understands the intention of the Draft NPS-IB is to promote indigenous biodiversity through (among other things) the identification and protection of SNAs of flora and fauna. The primary way this is achieved in the Draft NPS-IB is through section 3.8, which sets out assessment principles and methodologies for territorial authorities to apply when classifying areas as SNAs through planning documents.

20. However, in addition to areas identified as SNAs within planning documents, the proposed definition of SNAs includes:

An area identified as an area of significant indigenous vegetation or significant habitat of indigenous fauna as part of an assessment of environmental effects.

21. NZ Airports opposes this element of the definition. It is not appropriate for an SNA to be identified via an AEE submitted in support of a resource consent or notice of requirement. The Environment Court in *Hawthenden Ltd v Queenstown Lakes District Council*, recently found that it is not appropriate for landscape assessments to be left for consideration during the

resource consent application processes, due to their limited scope, lack of impartiality and the different role of local authorities when acting as a consent authority compared to a planning authority.⁶

22. Many resource consent applications are not publicly notified, meaning persons potentially affected by an SNA classification imposed through a consenting process will not have any chance to participate in the decision-making process. An AEE could also potentially identify an "SNA", which may then be refined or rejected entirely by the decision-maker on the relevant application. In extreme cases, this could also potentially encourage people to lodge consent applications supported by AEEs that identify areas of significant indigenous biodiversity for land for which those persons do not own and do not intend to develop. This could be in order for those persons to frustrate future development to which they may be opposed.
23. The definition of SNA must be amended to delete areas of significant indigenous biodiversity identified in AEEs.

MANAGING EFFECTS IN SIGNIFICANT NATURAL AREAS

24. Once SNAs are identified, the Draft NPS-IB includes several mechanisms to ensure their ongoing protection. This is primarily achieved through section 3.9, which requires several adverse effects to be avoided, and other adverse effects to be managed using the effects management hierarchy. The "effects management hierarchy" for the purpose of the Draft NPS-IB requires adverse effects to be avoided, remedied, mitigated, offset or compensated, and **"where possible"** the strictest of each of these controls be applied.

Avoiding adverse effects "where possible"

25. Requiring that adverse effects be avoided is one of the most significant restrictions that can be placed on activities. As considered by the Supreme Court in *King Salmon*, a requirement to "avoid" means "not allowing" or "preventing the occurrence of" an adverse effect.⁷ The full extent of how effects should be avoided must also be read in light of the objectives and policies of the Draft NPS-IB, and the other provisions within the NPS.⁸
26. In the context of the Draft NPS-IB, and particularly the rest of section 3.9(1)(b) and 3.9(2), which provide exceptions to the "avoid" restrictions, it seems that section 3.9(1)(a) is intended to be read strictly. In other words, unless an activity is provided for as one of the exceptions to the "avoid" direction, any of the listed adverse effects of that activity cannot be allowed to occur. The implications of this on activities located within or neighbouring SNAs would therefore be significant, as the NPS-IB would only allow such activities them to proceed where they do not adversely affect a SNA per section 3.9(1)(a)i.-iv, regardless of whether those effects could be mitigated or offset through other measures.
27. Even where an adverse effect is not one captured by section 3.9(1)(a), or is subject to an exception per section 3.9(2), the wording requiring adverse effects to be avoided "where possible" within the definition for the effects management hierarchy imposes a significant barrier. It is almost always "possible" to avoid an adverse effect, but it may be financially prohibitive, or result in the ineffective or inefficient operation of existing core infrastructure activities like airports.

⁶ *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160.

⁷ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 at [93].

⁸ At [95] (as discussed by the court in relation to the NZ Coastal Policy Statement).

28. NZ Airports seeks an amendment to the definition of "effects management hierarchy" under the Draft NPS-IB to:

effects management hierarchy means an approach to managing the adverse effects of subdivision, use and development that requires that –

- a) adverse effects are avoided where ~~possible~~ reasonably practicable;
- b) adverse effects that cannot be demonstrably avoided are remedied where ~~possible~~ reasonably practicable;
- c) adverse effects that cannot be demonstrably remedied are mitigated where reasonably practicable;
- d) in relation to adverse effects that cannot be avoided, remedied or mitigated, biodiversity offsetting is considered; and
- e) if biodiversity offsetting is not demonstrably achievable for any indigenous biodiversity attribute on which there are residual adverse effects, biodiversity compensation is considered

29. NZ Airports considers a change in the wording of this section from "where possible" to "where reasonably practicable" is in line with similar wording elsewhere within the RMA and planning documents. Ensuring adverse effects are avoided "where practicable" is still a high threshold for applications to meet, and will ensure effects are avoided or remedied appropriately.

Concerns with current nationally significant infrastructure exception

30. Due to the significant impacts that the "avoid" provisions discussed above can have on an activity, NZ Airports supports the exception provided for subdivision, use or development associated with nationally significant infrastructure.
31. However, NZ Airports considers that this section would still impose onerous restrictions on nationally significant infrastructure like airports. This is because the proposed exception only applies where SNA are classified as "Medium". As a result, there are no exceptions to the "avoid" provisions for "High" value SNAs.
32. Appendix 2 of the Draft NPS-IB provides a broad range of ecosystem and habitat attributes that qualify an SNA as "High" value. These attributes are likely to mean that areas situated within airport landholdings, or within the close vicinity of airports and their activities, will be classified as high value SNAs. For example, if an SNA near airports holds habitats for one "nationally threatened" or two or more "at risk" indigenous species, it will be classified as high value. Similarly, if an SNA is of "large scale and compact shape" or is "well buffered" in the context of the ecological district, it would meet the high value threshold.
33. Many of our member airports are deliberately situated on the outer edge of the urban centres they serve, meaning they neighbour SNAs with indigenous flora and fauna habitats. Several airports, including Auckland, Wellington and Tauranga, are also situated in the coastal marine environment, and are closely bordered by environments supportive of indigenous bird species. Further, many airports hold significant landholdings that are largely undeveloped despite their urban locations, in order to manage adverse noise effects and support safe aircraft operations. This may mean they classify within the high value attributes as large scale or well buffered in comparison to the otherwise urban ecological district within which they sit.
34. As well as being located in areas that may be more likely to be classified as SNAs, airports also have acute needs to manage indigenous flora and fauna to ensure their efficient and

safe ongoing operation. For example, airports are often required to trim or remove trees and vegetation to maintain clear sightlines for landing planes. In addition, many of our airports actively seek to manage neighbouring bird populations in order to decrease the risk of bird strike – a key threat to the safe operation of aircraft into and out of airports. The management of these concerns is a legal responsibility imposed upon airports through the Civil Aviation Rules to ensure the safe operation of runway approaches and aircraft. Airports seeking to manage bird strike may also be subject to further policies and rules, which local authorities are required to make under section 3.15 of the Draft NPS-IB, which protects "highly mobile fauna".

35. Due to the real safety and operational risk these issues can cause for airports, we are concerned that airports would be obligated to avoid activities such as relocating populations of birds which pose bird strike concerns, or trimming and removing vegetation which impedes on landing sightlines, where these flora and fauna fall within a high value SNA.
36. NZ Airports seeks the removal of distinction between high and medium value SNAs where these relate to the exceptions at section 3.9(2). This will ensure that our members can continue to carry out activities that have a functional and operational need, in terms of aviation safety, while also ensuring that adverse effects on SNAs can be appropriately managed.
37. NZ Airports seeks for section 3.9(2) to be amended to apply to all SNAs, as follows:

[...]

- (2) All adverse effects of a new subdivision, use or development must be managed using the effects management hierarchy if –
 - a) the subdivision, use or development is to take place in, or affects, an SNA ~~classified as Medium~~; and [...]

"EXISTING ACTIVITIES" PROVISIONS

38. NZ Airports is concerned that, while section 3.12 of the Draft NPS-IB appears to require that regional councils must provide for existing activities, the section actually requires local authorities to ensure:⁹
 - (a) the continuation of an existing activity will not lead to the loss, including through cumulative loss, of extent or degradation of the ecological integrity of any SNA; and
 - (b) the adverse effects of an existing activity must not be of greater character, intensity or scale than they were before the Draft NPS-IBs commencement date.
39. The first requirement suggests that local authorities must restrict existing activities if these activities are already adversely affecting the ecological integrity of any SNA (whether high or medium value). This appears to contradict the protections for existing uses under the RMA. Further, even where existing activities are not required to reduce their current effects per subsection 3.12(a), they will be constrained to the level of effects they are already producing under subsection 3.12(b).
40. This section would have significant impacts on airports' ability to continue their existing activities, and accommodate for expected and planned growth into the future. As discussed above, there are various adverse effects already generated by airports on SNAs. While our

⁹ NPS-IB, 3.12(3).

members actively seek to manage the extent of these effects, if airports are required to reduce the adverse effects of their existing activities this could undermine measures that ensure their safe and efficient ongoing operation.

41. Unlike section 3.9, there are no exceptions provided for nationally significant infrastructure from these restrictions. This seems counter to the intent of the Draft NPS-IB, which recognises that new activities should provide exceptions for such infrastructure, and other nationally significant concerns.
42. NZ Airports seeks that section 3.12(3) to be amended to allow for existing activities, and provide exceptions for the increased character, intensity or scale of the activities recognised as nationally significant infrastructure in section 3.9. Specifically, it should be amended as follows:
 - (3) In providing for existing activities in their policy statements and plans, local authorities must—
 - a) ensure the continuation of an existing activity will not lead to the loss, including through cumulative loss, of extent or degradation of the ecological integrity of any SNA; ~~and~~
 - b) ensure the adverse effects of an existing activity are of no greater character, intensity or scale than they were before the National Policy Statement commencement date; and
 - c) ensure the restrictions under sub clauses (a) and (b) are not imposed where:
 - i. there is a functional or operational need for the existing activity to be in that particular location; and
 - ii. there are no practicable alternative locations for the existing activity; and
 - iii. the activity is associated with:
 - a. nationally significant infrastructure;
 - b. mineral and aggregate extraction;
 - c. the provision of papakainga, marae and ancillary community facilities associated with customary activities on Māori land;
 - d. the use of Māori land in a way that will make a significant contribution to enhancing the social, cultural or economic wellbeing of tangata whenua.

Definition of "existing activities"

43. In addition, NZ Airports is concerned that the definition of "existing activity" in the Draft NPS-IB is too restrictive. As currently proposed, an existing activity for the purposes of the Draft NPS-IB includes "lawfully established" activities as at the date the final NPS-IB commences and excludes activities covered by existing use rights under section 10 of the RMA. This therefore excludes fully consented activities that have not yet commenced or have only been partially implemented. It also excludes activities that are reliant on existing use rights applied under section 10 of the RMA.
44. This would have a significant impact on the existing projects and activities of airports throughout New Zealand. For example, Auckland Airport's proposed Northern Runway, which has received its environmental approvals but is yet to be implemented, would be considered to potentially have significant effects on indigenous biodiversity, and yet would not be protected by this provision due to the current definition.

45. To exclude fully consented but unimplemented or partially implemented activities, or lawful existing uses from the definition of "existing activity" would represent a fundamental change to the RMA's consenting framework, removing the protections for consented but unimplemented or partially implemented activities from subsequent changes to planning frameworks (until the consents for those activities may lapse).
46. As such, NZ Airports seeks amendment of the definition of existing activity in the Draft NPS-IB to include:

Existing activity in this National Policy Statement, means a subdivision, use or development that is:

- a) lawfully established or consented at the commencement date;

OFFSETTING AND COMPENSATION

47. NZ Airports accepts that in some circumstances, offsetting and compensation will be required in order to fully address the adverse effects of activities on indigenous biodiversity. However, it has concerns that the scheme set out in the Draft NPS-IB will impose unnecessarily onerous restrictions on large scale infrastructure like airports.
48. Feedback has been sought in the Discussion Document (Question 36) as to the appropriate definitions for biodiversity offset and biodiversity compensation. NZ Airports supports an approach where offsetting and compensation are applied to redress residual adverse effects that are **more than minor**. As opposed to requiring offsets and compensation for *all* adverse effects, this approach is the most efficient and effective way to address actual adverse effects stemming from an activity. If the Draft NPS-IB applied offsetting and compensation requirements to all adverse effects, significant time and resource would need to be spent by applicants and decision makers in trying to quantify insignificant effects.
49. NZ Airports appreciates the detailed guidelines the Draft NPS-IB provides for offsetting and compensation measures to provide clarity and certainty for future users of the NPS-IB. However, we have concerns that the guidelines, and the effects management hierarchy, provide restrictive requirements to find suitable offset sites near to an original activity when that is not feasible for many airports for the reasons discussed throughout this submission.
50. Airports typically seek to restrict flora and fauna near their activities, in order to comply with safety requirements for their runways and aircraft operations. Airport developments, have already often faced significant additional cost in finding appropriate offsetting sites before they are able to consider compensation options.
51. As such, NZ Airports seeks consideration that any hierarchies and the associated policies held at Appendix 3 and 4 of the Draft NPS-IB need to consider the operational, locational and functional requirements of nationally significant infrastructure. As discussed in relation to the definition for the "effects management hierarchy" at paragraphs 25-27 above, the Draft NPS-IB must provide more flexibility when it is not practicable, safe or feasible to follow the hierarchy.

RESTORATION, ENHANCEMENT AND INCREASING INDIGENOUS VEGETATION COVER

52. The Draft NPS-IB includes requirements in section 3.16 for local and territorial authorities to develop objectives, policies and rules to promote the restoration and enhancement of

various indigenous biodiversity environments. This focuses on SNAs whose ecological integrity is degraded, areas that have "buffer" or "connection" functions for indigenous flora and fauna, and expands beyond the usual scope of the Draft NPS-IB to include wetlands and former wetlands.

53. The Draft NPS-IB's provisions relating to wetlands sit alongside similar provisions in the *Action for Healthy Waterways* reform proposed last year, which also provided for the protection, restoration and enhancement of wetlands. As discussed in our submission on that reform package, wetlands can be untenable environments to sit alongside airports due to the potential risks they provide in elevating bird strike concerns, as birds commonly settle in freshwater areas like wetlands. The directions to prioritise the restoration and enhancement of wetlands (and SNAs) may increase risk to airports by encouraging dangerous resettlement of birds in the vicinity of aircraft operations.
54. The Draft NPS-IB also includes further requirements at section 3.17 for regional councils to assess urban and rural "areas" and implement targets to increase indigenous vegetation cover. The wording of this section is broad, and unclear as to the size and scope of these "areas". NZ Airports seeks further clarity for this section, as if these "areas" are constrained such that they are too small, airports with large landholdings may perversely be required to increase indigenous vegetation that has deliberately been reduced to manage safety concerns like bird strike and obstacle management.
55. NZ Airports seeks amendments to ensure local and territorial authorities must consult with landowners that neighbour or control SNAs, wetlands and identified "areas", prior to progressing any policies under sections 3.16 or 3.17. We therefore request that these sections are amended to include a further subsection as follows:

(x) Local authorities must ensure they engage and consult with landowners that neighbour or control areas they propose to set aside for [restoration and enhancement OR increasing indigenous vegetation cover] prior to implementing any policy statements or plans for these areas.

CONCLUSION

56. NZ Airports would welcome the opportunity to discuss this submission with MfE in any further consultation relating to the Draft NPS-IB.

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