

13 March 2020

Ministry for the Environment
PO Box 10 362
Wellington 6143

Email: indigenousbiodiversity@mfe.govt.nz

To: The Ministry for the Environment

DRAFT NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

We thank you for the opportunity to review and provide feedback on the Draft National Policy Statement for Indigenous Biodiversity. Please find attached our submission points on this important document.

We welcome the opportunity to discuss this matter with you and to assist in any way we can in its finalisation.

If you have any queries in relation to this submission, please contact Michael Tucker, Manager Land Use Policy and Planning, at Michael.tucker@at.govt.nz or on 021 341 610.

Yours sincerely



Christina Robertson
Group Manager Strategic Land Use and Spatial Management

Enc: Auckland Transport's submission on the Draft National Policy Statement for Indigenous Biodiversity





DRAFT NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

To: Ministry for the Environment
indigenousbiodiversity@mfe.govt.nz

From: Auckland Transport – Planning and Investment
Private Bag 92250
Auckland 1142

Introduction

Auckland Transport is pleased to have the opportunity to submit on the Draft National Policy Statement for Indigenous Biodiversity (Draft NPS IB).

This submission relates to the drafted provisions and structure from an transport infrastructure lens. Auckland Transport has reviewed Watercare's submission and generally supports the matters raised. Auckland Transport also provided comments to Auckland Council for their submission.

Auckland Transport is a Council Controlled Organisation (CCO) of Auckland Council with the legislated purpose to contribute to an "effective, efficient and safe Auckland land transport system in the public interest". In fulfilling this role, Auckland Transport is responsible for:

- The planning and funding of public transport;
- Promoting alternative modes of transport (i.e. alternatives to the private motor vehicle);
- Operating the local roading network; and
- Developing and enhancing the local road, public transport, walking and cycling networks.

Auckland Transport supports the overall intention to maintain and restore indigenous biodiversity under the Resource Management Act 1991 and acknowledges that ensuring New Zealand maintains and enhances its indigenous biodiversity is crucially important. As such, Auckland Transport is committed to ensuring the maintenance and, where possible, restoration of indigenous biodiversity in the planning and delivery of complex transport infrastructure projects.

As such, Auckland Transport supports the Draft NPS IB in principle, subject to addressing the submission points identified below, including recommended amendments or other appropriate relief to address concerns raised.

Auckland Transport is more than happy to engage further with the Ministry on the matters set out in this submission in finalising the NPS IB.



Provision for Infrastructure

Auckland Transport seeks to ensure that the Draft NPS IB policy framework provides enough direction to territorial authorities to enable appropriate infrastructure in their plans. Sustainable management of resources cannot be achieved without enabling the necessary infrastructure to service communities and provide for their economic and social well-being. It is noted that there are no specific objectives or policies to provide for infrastructure, rather the reference to subdivision, use and development. Some infrastructure has much greater locational constraints than other types of development / activities, such as residential subdivision. The transport system provides an essential service to the community and, as such, needs to be appropriately provided for.

Auckland Unitary Plan approach

Auckland Transport worked closely with Auckland Council on the development of the Auckland Unitary Plan. The Auckland Unitary Plan provides for infrastructure within Significant Ecological Areas (SEAs), subject to rules and assessment criteria directed at maintaining ecological values and avoiding, remedying, migrating or offsetting adverse effects.

Auckland Transport considers that, without the ability to continue to construct, operate, upgrade and maintain Auckland's land transport system in areas with ecological and biodiversity values, our ability to deliver the Auckland transport network will be compromised.

This recognition within the Auckland Unitary Plan is fundamental to ensuring critical transport network infrastructure can continue to service Auckland's growing population in a way that also provides for the need to maintain indigenous biodiversity.

Definition of 'nationally significant infrastructure'

The definition of 'nationally significant infrastructure' as currently proposed does not sufficiently provide for the infrastructure which Auckland Transport is required to construct, operate, upgrade and maintain and, therefore, would make it difficult for Auckland Transport to fulfil its statutory responsibilities.

In Auckland, for example, arterial roads are managed by Auckland Transport - these are vital to the effective operation of the transport network along with State Highways and rapid transit infrastructure, providing the strategic network 'backbone,' and network resilience by way of alternative routes to complement the State Highways. In the Auckland Region, Auckland Transport and the New Zealand Transport Agency work together on a 'One Network' approach - from local roads to state highways, the whole system provides the interconnected transport network.

An amendment to the definition for 'nationally significant infrastructure' is required to provide appropriate recognition of the role of arterials and ensure there is a consenting pathway for such infrastructure. An amendment is also sought to 'rapid transit' to provide clarity.



Auckland Transport requests the following amendments:

Nationally significant infrastructure means any of the following:

a) state highways and arterial roads

...

f) rapid transit infrastructure

The Redoubt Road – Mill Road Corridor is an example of a transport project that traverses an area currently identified as a SEA. Through mediation, the appellant accepted the construction of a bridge across the SEA, so long as the adverse effects of the project were offset with pest control and additional planting. This solution would not have been possible under the Draft NPS IB as currently proposed if this was identified as a Significant Natural Area (SNA), as the Redoubt Road – Mill Road Corridor would not be considered under the 'nationally significant infrastructure' definition, and the effects on the proposed area would have to be avoided. It is estimated that to build a bridge with a longer span to ensure that the abutments would not be located within the area, the project cost would have increased at a minimum by an additional \$20 million. A better ecological outcome was achieved through Auckland Transport's commitment to undertake pest control, which is widely recognised as a key threat to indigenous biodiversity in New Zealand.

Policy 8

Policy 8 does not recognise the locational, functional, or operational needs and constraints that apply to infrastructure, particularly nationally significant infrastructure. This provision needs to be amended to refer to these other needs and constraints. 'Functional' and 'operational' need are defined terms and recognised in Clause 3.9. Such wording is also used in the Auckland Unitary Plan, being subject to robust analysis and support by infrastructure providers party to the proceedings. These definitions should be extended to and reflected in Policy 8.

Auckland's arterial roads, for example, often have an operational need to traverse areas that may be identified as SNAs due to the linear nature of the roading network and technical constraints preventing alternative routes. Auckland Transport requests the following amendment:

Policy 8: to recognise the locational, functional, or operational needs and constraints that apply to specific subdivisions, uses and developments.

Policy 10

Policy 10 proposes to provide for appropriate existing activities that have already modified indigenous vegetation and habitats of indigenous fauna. Auckland Transport notes that it is important to recognise existing infrastructure, and where removal of infrastructure may have greater environmental effects than leaving it in situ.



Clause 3.9 Managing adverse effects on SNAs

Auckland Transport requests the following amendment to Clause 3.9:

(1) Except as provided in subclauses (2), (3) and (4), local authorities must ensure that, in relation to any new subdivision, use or development that takes place in or affects, an SNA –

a) the following adverse effects on the SNA are avoided:

i. loss of ecosystem representation and extent:

ii. disruption to sequences, mosaics or ecosystem function:

iii. fragmentation or loss of buffering or connectivity within the SNA and between other indigenous habitats and ecosystems:

iv. a reduction in population size or occupancy of threatened species using the SNA for any part of their life cycle; and

b) the effects management hierarchy is applied to all other adverse effects.

(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*~~

a) there is a functional or operational need for the subdivision, use or development to be in that particular location; and

b) there are no practicable alternative locations for the subdivision, use or development; and

c) the subdivision, use or development is associated with:

i. nationally significant infrastructure:

ii. mineral and aggregate extraction:

iii. the provision of papakainga, marae and ancillary community facilities associated with customary activities on Māori land:

iv. 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.

The Draft NPS IB classifies SNAs as either 'Medium' or 'High.' For sites with 'High' values, the Draft NPS IB directs that effects on such areas must be avoided. The consenting pathway provided through the Draft NPS IB relates only to Medium SNAs, whereas works in / proximity to SNAs classified as 'High' will be a prohibited activity. This will be a concern for infrastructure providers such as Auckland Transport given its standing in case law.



As outlined in the Council's submission, distinction of 'Medium' or 'High' (including the proposed attributes) is not considered a suitable basis for determining the appropriateness of new activities as this framework is too subjective. Applying the effects management hierarchy to all SNAs will provide more flexibility for appropriate infrastructure to locate within SNAs, given the significant locational constraints that infrastructure providers face in Auckland and elsewhere in New Zealand. Consenting of infrastructure should include a robust assessment of indigenous biodiversity effects as relevant, and provide for mitigation, environmental compensation, and measures to avoid, remedy, and mitigate adverse effects.

If the two-tiered classification for SNAs into High and Medium value areas is retained, a consenting pathway for 'nationally significant infrastructure' (with the amendments to the definition as discussed above) must be provided for in High value SNAs as well as Medium SNAs.

Auckland Transport notes its support the wording in Clause 3.9(2)c that requires the subdivision, use or development to be 'associated with' nationally significant infrastructure.

Clause 3.12 Existing activities in SNAs

Clause 3.12 addresses existing activities in SNAs and proposes a new regime for the management of existing activities within locations that are identified by territorial authorities as SNAs. The Draft NPS IB defines 'existing activity' as activities that are 'lawfully established' at the date the final NPS IB commences, however, excludes land uses covered by existing use rights under s10 RMA. Auckland Transport is concerned that such an approach will effectively prohibit existing, lawfully established transport infrastructure located in SNAs from any further development or upgrades, taking into account the importance of such assets and their intended life. As such, Auckland Transport requests appropriate amendments.

Fully consented activities that have not yet commenced or have only been partially implemented appear to be excluded. It is assumed that this is an unintended oversight. Auckland Transport requests that the 'existing activity' definition be amended to clarify that it also applies to consented activities.

Identification of SNAs

The Draft NPS IB proposes that SNAs could be identified as part of an assessment of environmental effects. This option does not necessarily ensure a robust decision-making process, ensuring all relevant parties have an opportunity to participate. This proposal is not supported.



Consistency across the framework of national policy statements

Auckland Transport requests that further consideration is given by the Ministry and other relevant Central Government agencies to ensure that the Draft NPS IB and other currently proposed national policy statements (such as the National Policy Statement for Freshwater Management), complement each other as much as possible in terms of key matters, such as terminology and definitions as included in this submission.

A handwritten signature in black ink, appearing to read 'M. Tucker', is positioned above a horizontal line.

Signed for and on behalf of Auckland Transport

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