

13/03/2020

Ministry for the Environment
To: Biodiversity Team
Environment House
23 Kate Sheppard Place,
Pipitea,
Wellington 6011

Sent via email to: indigenousbiodiversity@mfe.govt.nz

Dear Biodiversity Team,

RE: Proposed National Policy Statement for Indigenous Biodiversity: Lyttelton Port Company Feedback

- 1 Lyttelton Port Company Limited (*LPC*) wishes to take the opportunity presented by the consultation on the draft National Policy Statement for Indigenous Biodiversity (*NPSIB*) to identify specific issues relevant to ports and key opportunities the draft *NPSIB* presents.
- 2 *LPC* considers it essential that any policy statute properly reflects the significance of port infrastructure and facilitates the continued operation and development of these important public assets without unreasonable constraint or compromise.
- 3 Figures provided by the Freight Information Gathering System¹ show that 99.7% of freight was exported and 99.67% was imported by sea in 2018. This highlights the significance of ports and associated infrastructure networks to the national economy.
- 4 *LPC* is the South Island's largest port and owns and operates three sites within Greater Christchurch; the Lyttelton Port (the *Port*), and two 'inland' ports – the City Depot in Woolston (*CityDepot*), and the Midland Port in Rolleston (*MidlandPort*). These port assets are significant infrastructure in a local, regional and national sense and are of strategic importance.
- 5 *LPC*'s operation relies on the provision of efficient rail and road networks within the South Island to receive and distribute freight. *LPC* utilises these networks efficiently move freight between *MidlandPort*, *CityDepot* and the *Port* so are integral to *LPC*'s operation.
- 6 *LPC* has recently developed its Sustainability Strategy which has a particular focus area on biodiversity and an emphasis on *LPC* as a business being biodiversity positive; meaning aiming to continually improve on its operations and development to make positive contributions to biodiversity so has particular interest the draft *NPSIB* for these reasons.
- 7 This letter sets out *LPC*'s general feedback in relation to the proposed *NPSIB*. We have structured this feedback in two key areas: where recognition of significant infrastructure is essential, and where the *NPS* may be improved to provide for biodiversity outcomes that

¹ <https://www.transport.govt.nz/mot-resources/freight-resources/figs/> accessed on 02 March 2020

enable industry stakeholders such as LPC to make positive contributions through its business activities.

DEFINITION OF PORTS WITHIN NATIONAL SIGNIFICANT INFRASTRUCTURE

- 8 LPC **supports** the inclusion of commercial ports as National Significant Infrastructure but suggest the definition for (h) commercial ports would be improved to include port activities, associated infrastructure, and recognise the integral nature of inland ports in providing for efficient operation and use of resources.
- 9 The current definition proposed refers to the port company as an entity at specific geographical points. LPC expects that the intent of the definition is to define port activities and infrastructure both at sea and inland ports, so we propose that the definition should be revised to better meet this intent.
- 10 We request specific consultation on what an appropriate definition of *Commercial Ports* which sufficiently includes the scope of activities and infrastructure within the context of modern ports.

CLARITY PROVIDED BY RECOGNISING OTHER POLICIES RELATIONSHIPS

- 11 We **support** inclusion of statements within the draft NPSIB such as that in Section 1.5 for the New Zealand Coastal Policy Statement. We acknowledge that conflict can occur in planning processes where clarity is not provided between conflicting policies.

THE DRAFT NPSIB OBJECTIVES NEED TO ENHANCE BIODIVERSITY

- 12 LPC **supports in part** *Objective 1: To maintain indigenous biodiversity* but the objective should also seek to enhance biodiversity. The draft NPSIB was developed due to the ongoing decline of biodiversity throughout New Zealand which LPC believes must be reversed. The primary objective of the draft NPSIB does not go far enough into firstly stopping the decline of and restoring biodiversity.
- 13 LPC is a foundation partner in the Whaka Ora Partnership which aims to restore harbour health with six ecological areas for change which includes terrestrial environments within geographical jurisdiction set within the draft NPSIB. As a partner we support and provide leadership for the Whaka Ora Healthy Harbour and undertaken our own projects to help achieve the vision of a healthy harbour.
- 14 LPC has recently developed its biodiversity strategy which identified a clear need contribute to biodiversity improvement as part our business function. This is to be achieved through undertaking ongoing biodiversity positive actions in our operations and development. Geographically the strategy is focused within the Lyttelton Harbour Basin and considers ecological linkages between the Port Hills and Southern Alps. Implementation requires collaborative work with regulators, trusts and landowners to be successful.
- 15 Objective 1 does not provide for the enablement of positive outcomes for biodiversity as the policies for this objective do not seek to restore biodiversity beyond what is required to maintain. We therefore recommend that objectives and policies within the draft NPSIB should reflect the need to make positive gains to biodiversity through restoration, enhancement, and creation of habitat. Policies to support this objective should then give effect to this objective and encourage people and communities to do so.

RECOGNITION OF PRIVATE INDUSTRY

- 16 We **support in part** Object 6 but suggest this objective could be improved through an additional recognition of the role of private industry and infrastructure providers within New

Zealand as stewards and kaitiaki of indigenous biodiversity. LPC believes this is important within New Zealand's economic setting private industry can have a major bearing on biodiversity related values through development, activities and environmental programmes undertaken as part of its business function as outline below.

- 17 LPC is undertaking a major redevelopment following the Christchurch earthquakes which has required reclamation and development of previously unused land. Through this process we have identified the need to ensure our development and operation provides for a healthy harbour. In the course of the planning process the Whaka Ora Healthy Harbour programme was implemented and LPC signed on as a partner with Te Hapū o Ngāti Wheke, Te Rūnanga o Ngāi Tahu, Environment Canterbury and Christchurch City Council.
- 18 LPC believes the Whaka Ora Healthy Harbour programme is a key demonstration of private industry contributing to positive biodiversity outcomes. LPC does so through provision of science and technical information to ensure we manage our operations and development to ensure a healthy harbour remains.
- 19 In addition to the Whaka Ora, LPC provides support for a number of ecological restoration projects with specific examples being supporting the Quail Island Trusts ecological restoration since 2009, restoration of 17Ha of land above the Port in partnership with the Banks Peninsula Conservations Trust.

CONSENT PATHWAYS ARE ESSENTIAL COMMERCIAL PORTS

- 20 LPC **supports** the draft NPSIB seeking to provide for Nationally Significant Infrastructure including commercial ports, but **do not support** the inability to protect existing assets that are Nationally Significant Infrastructure work is required within a high SNA to do so.
- 21 LPC strongly recommended Policy 3.9 is revised to provide a consent pathway for the operation, maintenance, protection, and upgrading of existing Nationally Significant Infrastructure.
- 22 LPC considers any planning instrument should identify the importance of commercial ports and provide a clear consenting pathway to enable operation and development of its infrastructure. We consider that Policy 3.9 which does not provide a consenting pathway that enables this ability, even for existing infrastructure.
- 23 In current draft, this policy would prevent Nationally Significant Infrastructure from being able to protect assets with new infrastructure (e.g. slope protection) in a high value SNA rockfall and could result in the need to rebuild infrastructure elsewhere if not possible. This then would test whether the impact of doing so would whilst outside a high SNA would result in larger scales of biodiversity effects than installation of protection would have.
- 24 There is a current lack of recognition of the significance of ports as significant infrastructure of strategic importance that **must** be able to operate to provide for New Zealand's economic and social wellbeing. This has become particularly clear, for example, through the application of the New Zealand Coastal Policy Statement 2010 (NZCPS) in *Environmental Defence Society v Otago Regional Council*.²
- 25 The case highlights the need to provide clear statutory guidance and support for existing port infrastructure and development of that infrastructure. For example, Ports may have to shut down if they are unable to continue certain essential activities such as protecting assets. Major implications such as those would have a significant flow on effect to New Zealand's economy.

² *Environmental Defence Society Incorporated v Otago Regional Council* [2019] NZHC 2278.

Therefore, a consent pathway should always be provided for existing Nationally Significant Infrastructure.

CRITERIA FOR SIGNIFICANT NATURAL AREAS (SNA'S)

- 26 LPC **supports in part** the inclusion of the SNA criteria in Appendix 1 to provide clarity to stakeholders; however, identifies the criteria contains subjective terms used to classify an SNA. For example, 'moderate to large size', 'well-buffered', 'large numbers' are used without definition of what these terms mean in a quantitative sense to guide ecologists. We foresee difficulty in implementation SNAs as experts may not agree on thresholds within these subjective terms.
- 27 LPC suggests further work between experts is required to determine what thresholds should be met in determining SNA's where subjective judgement is required and those should be part of this policy.
- 28 LPC considers that using the framework proposed could result in a SNA being created with a singular criterion which may then result in large portions of New Zealand's land holding becoming a SNA and policy applied that was not intended. We consider that further work is required to develop the decision-making framework with multicriteria approach to ensure policies within the draft NPSIB are fit for purpose for SNA's that are captured using the criteria.

MANAGEMENT FRAMEWORK FOR SNA'S

- 29 LPC **supports in part** the inclusion of the management framework for determining high and medium SNA as in Appendix 2; however, this requires further definition of subjective terminology used and consideration of how thresholds work together so as to ensure that areas are correctly assigned values that the subsequent policies are intended to manage.
- 30 One possible example is that there be situations where certain species, such as threatened lizard species or plants are present on marginal land (e.g. unmown roadside verges) throughout the country which may trigger a high SNA value if these values are not balanced correctly and policies applied appropriately.
- 31 We encourage the Biodiversity Team to consider how to provide better definition to subjective terms used in Appendix 2 including but not limited to 'typical', 'high', 'moderate', 'well-buffered' to ensure experts involved in implementation of the draft NPSIB are able to do so in an efficient manner by reducing conflicts in judgement.
- 32 Additional to this the assignment of high or medium values needs to consider a weighted multicriteria approach and a framework provided within Appendix 2 setting out how this works. Present interpretation requires subjective judgement and is likely to make all SNA's high due to a singular criterion being met.

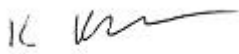
ENCOURAGEMENT OF OFFSETS AND/OR COMPENSATION IN ADVANCE

- 33 LPC **does not support** the requirement of Appendix 3 Principle 10; to directly link an advance offset to an activity at the time of development and Appendix 4 Principle 10; to directly link an advance compensation to an activity at the time of development. We believe this requirement will not provide the incentive for individuals or businesses undertake biodiversity restoration work beyond that required by a proposal if it has no potential benefit to a business for the cost in doing so.
- 34 In New Zealand offsetting and compensation in advance is not common practice due to legal uncertainty and a lack of assurance that the council will take the offset gains into consideration

to justify investment by the applicant. In addition, it is acknowledged this is unlikely to change unless appropriate policies and banking systems are established³.

- 35 Whilst we appreciate there are some systems which require development to implement advanced offsets and compensation. In addition, factors such as ecosystem type and geography would need due consideration; however, this should not be a barrier to such a system and may require collaboration with regional and local authorities to develop. LPC believes there are benefits to New Zealand's biodiversity in such an undertaking.
- 36 Enabling businesses to account biodiversity contributions in advance of a proposal without directly linking the two not only provides incentive to industry to proactively contribute to biodiversity, but it also achieves the objectives of maintaining and enhancing biodiversity. For example, and in general terms, if an offset or compensation was to be utilised the certainty provided in it being existing, accounted and proven at the time of application would prove biodiversity is maintained. If the offset or compensation is not utilised or has a significant time period prior to being utilised this would result in a biodiversity enhancement beyond baseline either on permanent or temporary basis respectively.
- 37 LPC wishes to also note its support for the submission lodged by the New Zealand Port Industry Chief Executives to this consultation.
- 38 LPC has had the opportunity to review KiwiRail's submission and notes support for that submission.
- 39 LPC would welcome the opportunity to meet with the members of the Ministry for the Environment team undertaking this project to discuss the contents of this letter further in person.

Yours sincerely,



KIM KELLEHER
Environment and Planning Manager

³ Maseyk, F., Ussher, G., Kessels, G., Christensen, M., & Brown, M. (2018) Biodiversity offsetting under the Resource management Act: A guidance document. *Prepared for the Biodiversity Working Group on behalf of the BioManagers Group.*