



# **Draft National Policy Statement for Indigenous Biodiversity**

*A submission to the Ministry for the Environment*

14 March 2020



Trustpower Limited ("**Trustpower**") welcomes the opportunity to provide a submission to the Ministry for the Environment ("**MfE**") on its *Draft National Policy Statement for Indigenous Biodiversity* ("**the Draft NPS**").

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## SUMMARY OF VIEWS

Trustpower considers that the Draft National Policy Statement on Indigenous Biodiversity (**'Draft NPS'**), is a further regulatory constraint and risk for existing and new renewable electricity generation infrastructure. It establishes a management regime for significant natural areas and indigenous biodiversity that is highly restrictive, prescriptive and will unduly constrain the development of nationally significant infrastructure. Based upon the reference documentation supporting the Draft NPS, it appears that limited regard has been given to the delicate balance that often exists between the provision of nationally significant infrastructure and the management of indigenous biodiversity under the RMA.

Furthermore, no consideration has been given to the environmental benefits that often accrue with the consenting or development of significant infrastructure projects.

### *Interaction with significant natural areas*

Many of Trustpower's hydro-electric power schemes (**'HEPS'**) are inter-related with significant natural areas. In this regard:

- Thirteen of Trustpower's hydro-electricity schemes are located amongst, or adjacent to, significant natural areas already identified in regional and district planning documents;
- The emergency spillway for the canal infrastructure at the Kaimai HEPS has been in place since the 1970's and provides for the discharge of water to a gully / depression that feeds into a significant natural area identified in the Western Bay of Plenty District Plan. However, the utilisation of this spillway in an emergency event would generate adverse effects on the significant natural areas which cannot be avoided;
- The shoreline of Lake Coleridge includes several significant natural areas identified in the Selwyn District Plan that are hydrologically connected to the level of the lake. The regulation of the lake level for electricity generation purposes at the Coleridge Power Station is constrained by these significant natural areas;
- The access road to the Hinemaiaia HEPS in the Taupō District is within a significant natural area that is scheduled in the Taupō District Plan. Any replacement of the turbine units or other infrastructure at the scheme would require the upgrade of the existing road, and the subsequent removal of indigenous vegetation. Avoiding these upgrades (e.g. by aerial deployment of equipment) is not technically or economically feasible;
- The ground deformation and seismic stability monitors for the Matahina HEPS are located in a significant natural area identified in the Whakatane District Plan. Trustpower had to seek specific rules in the Whakatane District Plan that provided vegetation clearance in the significant natural area in order to maintain access to the monitoring equipment. These rules would not give effect to the Draft NPS as currently proposed; and
- The New Plymouth District Council has sought to identify land immediately abutting the tailrace of the Mangorei HEPS as a significant natural area, potentially precluding the ability to undertake remedial or upgrade works on the tailrace.

### *Mitigation and compensatory measures*

Trustpower is proud of the mitigatory measures and environmental compensation it has offered as part of the re-consenting and consenting of its renewable electricity generation infrastructure in order to address potential impacts on indigenous biodiversity. Such measures have been accepted as appropriate by stakeholders, including the Department of Conservation on a number of occasions, and deemed consistent with the purpose of the RMA by local authorities and the

Environment Court. These measures have provided positive environmental outcomes over and above the status quo that would not otherwise have been realised had Trustpower not been consenting its infrastructure.

Examples of the mitigatory and environmental compensation measures developed by Trustpower include:

- Habitat enhancement for migratory bird species (e.g. pied oystercatcher) via pest control in the Wairua River; and
- The protection, enhancement, management and restoration of 180 ha of indigenous area in the Arnold Valley (West Coast) for the loss and disturbance of 47 ha of edge and patchy indigenous areas in the Arnold Valley, which had an overall significant terrestrial ecological benefit associated with the project.

Trustpower has never proposed, or accepted the need to undertake, formal biodiversity offsetting in accordance with the guidelines set out in the Business and Biodiversity Offsets Programme (**BBOP**), or the *Guidance on Good Practice Biodiversity Offsetting in New Zealand* by the Department of Conservation. In this regard, it is Trustpower's experience that there are very few examples across New Zealand where fully developed offsetting proposals have been offered and implemented by a project proponent. Where biodiversity offsetting has been proposed by a project proponent, it is notable that such measures have been the subject to extensive debate between ecologists through the Environment Court and Boards of Inquiry over the suitability and ratio of the offsetting that is proposed. Examples include the Mount Cass Wind Farm in North Canterbury and the Roads of National Significance through the Greater Wellington Region.

Trustpower consider that greater environmental outcomes can be, and have been, achieved where environmental compensation initiatives have been offered by project proponents. Such compensatory measures have been recognised by the Department of Conservation as providing positive outcomes and achieving the purpose of the RMA. The Draft NPS should make greater provision for this as an appropriate option throughout its objectives and policies.

Further detail on the relief sought by Trustpower is provided in the submission that follows.

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## 1.0 INTRODUCTION TO TRUSTPOWER

- 1.1 Trustpower is a leading hydro-electricity generator and retailer in New Zealand. The company owns and operates 19 hydro-electricity schemes across New Zealand, and generates approximately 8% of New Zealand's total hydro-electricity supply on an annual basis. Trustpower also holds a controlling interest in King Country Energy.
- 1.2 Trustpower's existing hydro-electric power schemes are lifeline utilities under the Resource Management Act 1991 ('RMA') and Civil Defence Emergency Act 2002.

### *Electricity distributed by local distribution networks is critical to New Zealand*

- 1.3 Electricity generated by Trustpower's hydro-electric power schemes is conveyed to industrial and residential consumers via the National Grid and local distribution networks. The supply of electricity via both networks is critically important to security of electricity supply, and the social and economic wellbeing of a range of different communities throughout New Zealand.
- 1.4 The importance of regional (i.e. embedded) generation connected to local distribution networks ('embedded generation'), to regional populations in New Zealand is illustrated by the Kaimai HEPS – located approximately 20 km from the outer suburbs of Tauranga – and which supplies approximately 20% of Tauranga's electricity demand during peak demand periods via Powerco's local distribution network (given that the national transmission network is not sufficient to meet peak demand in Tauranga). Nationally significant renewable electricity generation infrastructure cannot just be that which supplies the National Grid.

### *Exposure to statutory planning processes*

- 1.5 Trustpower's hydro-electric power schemes are located across ten regions and 17 districts in New Zealand. As such, Trustpower has a high degree of exposure to the planning frameworks that apply to the protection of significant natural areas and the maintenance of indigenous biodiversity in different local authority jurisdictions. The company also expends significant resource participating in statutory planning processes to ensure that (i) suitable provision is made for the protection, maintenance and upgrade of its existing hydro-electric power schemes, and (ii) opportunities for the development of new renewable electricity infrastructure are provided for as a matter of national significance in accordance with the National Policy Statement for Renewable Electricity Generation ('NPS:REG'). This process can often require seeking to resolve conflicts between different national policy statements and management objectives for natural and physical resources, which will be further exacerbated by the Draft NPS.

### *'Re-consenting' and consenting projects reduce generation capacity*

- 1.6 Trustpower has significant experience in the consenting of existing and new hydro-electricity and water conveyance infrastructure under the RMA. Most of Trustpower's hydro-electric power schemes have been 're-consented' over the past 25 years, which has resulted in a range of additional operational constraints and environmental mitigation being imposed on the resource consents for these schemes. The reality is that re-consenting processes, and the requirement for the operation of existing hydro-electric power schemes to be recast to conform with an ever increasing regulatory framework (such as that proposed in the Draft NPS), typically results in the loss of annual electricity generation capacity and the loss of operational / storage flexibility. In this respect,

Trustpower's hydro-electricity schemes have had their generation output reduced by an average of 5% through each re-consenting processes.

- 1.7 Trustpower's experience with the consenting of new renewable electricity generation infrastructure has included the Wairau Valley HEPS in the Marlborough District (72 MW) and the Arnold HEPS in the West Coast Region (46 MW). These projects have required a comprehensive assessment of the potential effects on indigenous biodiversity and the identification of a suitable mitigation / compensatory packages to ensure that potential impacts were appropriately addressed and, most importantly, the purpose of the RMA was promoted. However, for reasons discussed later in this submission none of these projects have included biodiversity offsetting in a manner similar to that set out in the Draft NPS.

## 2.0 CONTEXT TO TRUSTPOWER'S SUBMISSION

- 2.1 The provision of existing and new renewable electricity generation infrastructure is identified as a matter of national significance under the RMA (as identified in the NPSREG). Despite this recognition, the drafting of further national policy statements and national environmental standards do not seek to resolve key resource management issues in an integrated or coordinated manner. This means that operation, upgrade and development of renewable electricity generation infrastructure is increasingly at risk of further constraints.

### *Impacts on transitioning to a low carbon economy*

- 2.2 Trustpower considers that the Government needs to take greater care to ensure that the role of renewable electricity generation in assisting New Zealand's transition to a low emissions economy is not undermined by the Draft NPS. In this regard, the Government has made both international and domestic commitments to reduce greenhouse gas emissions, and has also committed to a whole of economy climate change work programme. Further, the Government has committed to New Zealand transitioning to 100% renewable electricity generation by 2035 – and is developing policy packages which aim to accelerate the deployment of renewable electricity generation and reduce carbon emissions.
- 2.3 Given that climate change is one of the most significant issues facing New Zealand, there is a need to ensure a coordinated policy response from the Government to important resource management issues – so that the key outcomes sought by the Government can be achieved. This has to include the protection of existing renewable electricity generation infrastructure and the provision of new infrastructure in appropriate locations. The provision of renewable electricity and the de-carbonisation of the New Zealand economy is one of the most effective measures available to the Government to assist in mitigating the potential impacts of climate change on indigenous biodiversity - which is identified as a key course of action in the Draft NPS.

### 3.0 SUMMARY OF KEY SUBMISSION POINTS

3.1 The key aspects of Trustpower's submission on the Draft NPS, which are discussed in more detail in the sections below, are:

- i. While the protection of significant natural areas is a matter of national importance under the RMA, the law is clear that the maintenance of indigenous biodiversity is not an outcome to be achieved above all other matters related to the use and development of natural and physical resources. As such, and in accordance with Part 2 of the RMA, the objectives and policies of the Draft NPS needs to appropriately recognise that the protection of significant natural areas and the maintenance of indigenous biodiversity does not preclude use and development in appropriate places, and that there are functional constraints limiting the location of activities;
- ii. The Draft NPS establishes an assessment framework for significant natural areas that has removed important ecological qualifiers and contextual matters, which will result in large areas of indigenous vegetation and habitats with low ecological value being inappropriately classified as 'significant';
- iii. Further to the above, the classification of significant natural areas as either 'high' or 'medium' via the attributes listed in Appendix 2 is an artificial construct and not necessary to achieve the requirements of Section 6(c) of the RMA;
- iv. There is a lack of consenting pathways available for nationally significant infrastructure in significant natural areas. The Draft NPS require the avoidance of all adverse effects in significant natural areas that are classified as 'high', and the avoidance of all adverse effects commonly represented by development that impact upon indigenous vegetation or habitats;
- v. The effects management hierarchy required for the management of adverse effects on 'medium' significant natural areas and other areas of indigenous biodiversity is unworkable and fails to provide flexibility for solutions to be developed that achieve the management expectations for these areas set out in the Draft NPS. Greater provision needs to be made for compensatory measures in light of the value they have provided to indigenous biodiversity in New Zealand;
- vi. The maintenance of indigenous biodiversity needs to be considered at the scale of the proposal in question and relative to the indigenous biodiversity being assessed. The maintenance of indigenous biodiversity cannot mean there can be 'no reduction' in the size of indigenous taxa populations or the loss of extent of an ecosystem or habitat. This would mean that the death of one individual taxa as part of a proposal would not be permissible; and
- vii. Trustpower supports limiting the Draft NPS to terrestrial environments given the focus on indigenous biodiversity in the New Zealand Coastal Policy Statement and the National Policy Statement on Freshwater Management. The creation of regulatory overlap in relation to indigenous biodiversity should be avoided as far as practicable.



- 3.2 In order to avoid repetition, and enable discussion on overlapping matters, Trustpower's submission on the provisions of the Draft NPS is structured under the following headings:
- Overview of the Draft NPS;
  - Provision for use and development of natural and physical resources;
  - Identification / classification of significant natural areas;
  - Management of significant natural areas;
  - Management of non-significant natural areas;
  - Restoration of indigenous biodiversity; and
  - Other matters.

## 4.0 OVERVIEW OF THE DRAFT NPS

- 4.1 Trustpower has undertaken a comprehensive review of the Draft NPS, and considered the requirements of Sections 45, 45A and 51 of the RMA in terms of the scope of any national policy statement and the matters that are to be considered. These include the requirement to consider the matters in Part 2 of the RMA.
- 4.2 Further, Trustpower has identified the following matters which should guide the drafting of the Draft NPS:
- Objectives should clearly state the outcome that is sought to be achieved;
  - Policies should clearly identify the course of action that is to be taken in order to implement the relevant objectives (be it as part of the consideration of resource consent applications or in the development of lower-order statutory planning documents); and
  - Definitions and assessment matters should be clear, and not require judgement or detailed interpretation as to whether an activity qualifies under a listed definition (i.e. is the affected vegetation deemed indigenous or does my proposal form offsetting or compensation).
- 4.3 Furthermore, there is a need for clear, rationale links between the objectives, policies and implementation requirements so that the intended resource management outcomes are achieved over time. This requires a clear understanding of the particular implications of the language in objectives and policies. As an example, objectives and policies in the Draft NPS should not seek that adverse effects be avoided, or there be no reduction in indigenous biodiversity, if there is actually some legitimate expectation that such effects may be tolerated in certain circumstances, or when associated with particular activities.
- 4.4 Trustpower contends that the Draft NPS does not provide improved clarity and direction to local authorities and resource users regarding the management of indigenous biodiversity. In this regard, a number of the objectives and policies are ambiguous, confusing and include concepts that are poorly defined or understood (which are discussed further in this submission). Legitimate large-scale projects that provide for improvements in environmental outcomes (i.e. climate change benefits) will also be unnecessarily precluded by the Draft NPS in light of its inflexible approach. Such consequences do not appear to have been fully understood or evaluated in the Regulatory Impact Analysis.

- 4.5 In light of the above, Trustpower proposes that Policies 1 to 12 be deleted from the Draft NPS and that the implementation requirements in Part 3 be reframed as policies. In this regard, the existing policies in the Draft NPS effectively repeat the objectives verbatim (e.g. Policies 1 and 4) or are captured in Part 3 of the Draft NPS (e.g. Policy 2). There is a high degree of repetition in the existing policies and they don't outline a clear course of action to be followed in order to achieve the objective.
- 4.6 Trustpower does, however, recommend that Policies 3, 8 and 10 of the Draft NPS be retained as they are not repeated in Part 3 and build upon the outcomes sought in the objectives of the Draft NPS.

## 5.0 USE AND DEVELOPMENT OF NATURAL AND PHYSICAL RESOURCES

- 5.1 Trustpower recognises that the protection of significant natural areas is a matter of national importance under the RMA. However, the law is clear that the maintenance of indigenous biodiversity is not an outcome to be achieved above all other matters related to the use and development of natural and physical resources. It is simply an additional matter to be weighed when deciding whether the protection, use or development of natural and physical resources achieves Part 2 of the RMA.
- 5.2 Given that many significant natural areas are located on private or Maori-owned land, it is necessary for the objectives and policies of the Draft NPS to recognise that the protection of significant natural areas and the maintenance of indigenous biodiversity needs to be considered alongside the need to undertake use and development activities in appropriate places / circumstances, and that there are often functional constraints limiting the location of certain activities.
- 5.3 As discussed in the introductory sections to this submission, the Draft NPS currently establishes a management regime that will unduly constrain the operation and development of nationally significant infrastructure. The development of nationally significant infrastructure, and particularly renewable electricity generation infrastructure, inevitably has an interface with significant natural areas and indigenous biodiversity. This is acknowledged in the NPSREG, which notes that the natural resources from which electricity is generated can coincide with areas of significant indigenous vegetation and significant habitats of indigenous fauna.<sup>1</sup> In light of this, Trustpower considers that this potential interaction needs to be acknowledged in the Draft NPS and provision made for ensuring that positive outcomes are enhanced where these interactions occur.
- 5.4 Further discussion on the effects management hierarchy that applies to nationally significant infrastructure is discussed later in this submission. However, Trustpower considers that Objective 6 and Section 3.7 of the Draft NPS require amendment in order to recognise that need for use and development, and the outcomes sought for its interaction with indigenous biodiversity.

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<sup>1</sup> Preamble to the National Policy Statement for Renewable Electricity Generation 2011.

5.5 Objective 6 of the Draft NPS should be deleted and replaced with the following:

**Objective 6: to enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:**

- a) The protection of significant natural areas and the maintenance of indigenous biodiversity does not preclude subdivision, use and development in appropriate places and forms, and within appropriate limits;**
- b) Some use and developments can only be functionally located in sites that contain significant natural areas or areas of indigenous biodiversity; and**
- c) Use and development can provide opportunities to restore or enhance indigenous biodiversity that would not otherwise be achieved.**

5.6 Section 3.7 of the Draft NPS should be amended as follows:

### **3.7 Social and Cultural Wellbeing**

*In implementing this National Policy Statement, local authorities must recognise –*

- a) that the maintenance of indigenous biodiversity contributes to the social, economic and cultural wellbeing of people and communities; and*
- b) ~~that the maintenance of indigenous biodiversity does not preclude subdivision, use and development in appropriate places and forms, within appropriate limits~~ the need for people and communities to provide for their social, economic, and cultural wellbeing through subdivision, and the use and development of natural and physical resources; and*
- bb) the need to provide for the operation, maintenance, upgrading and development of nationally significant infrastructure in locations that are identified as significant natural areas and contain areas of indigenous biodiversity; and*
- c) that people are critical to maintaining and enhancing indigenous biodiversity; and*
- d) the importance of forming partnerships between local authorities, tangata whenua, landowners, people and communities in maintaining and enhancing indigenous biodiversity; and*
- e) the importance of respecting and fostering the contribution of landowners as stewards and kaitiaki; and*
- f) the value of supporting people and communities in understanding, connecting to and enjoying indigenous biodiversity.*

## 6.0 IDENTIFICATION / CLASSIFICATION OF SIGNIFICANT NATURAL AREAS

- 6.1 Section 3.8, Appendix 1 and Appendix 2 of the Draft NPS collectively introduce a framework for the assessment and classification of areas as significant indigenous vegetation and / or significant habitats of indigenous fauna. Trustpower recognise that the identification of significant natural areas is required in order to effectively implement Section 6(c) of the RMA.
- 6.2 It is also recognised that the criteria for the identification of significant natural areas are often a matter of contention / appeal in the drafting of regional and district planning documents. As such, Trustpower is generally supportive of national policy direction on how significant natural areas are to be identified. This will provide certainty for local authorities and landowners, and partly assist in reducing costs associated with the development of regional and district planning documents.
- 6.3 Trustpower generally supports the principles identified in Section 3.8(2), as previous experience suggests that the assessment of significant natural areas for inclusion in regional and district planning documents can become problematic when landowners have distrust of local authorities. That said, the principles in the Draft NPS should specify that advance physical inspection is an absolute requirement in order for an area to be classified as significant – notwithstanding the survey effort this may place on a local authority. This is necessary for two reasons:
- There are a number of examples where areas have been classified as significant from aerial mapping, which has resulted in mapped boundaries that do not align with the values that exist on the ground; and
  - The potential implication of the classification of an area as a significant natural area for use and development by a landowner (i.e. inaccurate mapping may inappropriately restrict the ability of landowner to even apply for resource consent for a proposal).
- 6.4 As is already noted in relation to Section 3.8(2)(d), local authorities have remedies under Section 333 of the RMA if a landowner refuses to provide access to their property. Therefore, Trustpower consider there is no reasonable defence for local authorities not undertaking the necessary ‘ground-truthing’ of potential significant natural areas.
- 6.5 Notwithstanding its support for how national policy direction on how significant natural areas are to be identified, Trustpower does not support the criteria in Appendix 1 of the Draft NPS. The criteria developed for the Biodiversity Collaborative Group (by Mike Harding) were ecologically based, provided attributes with useful qualifier to avoid ambiguity, and, most importantly, did not have the potential to capture vegetation and habitats with low ecological value as ‘significant’. The criteria in Appendix 1 have been significantly amended to the point that they bear little resemblance to the original proposal – and important ecological qualifier and context has been removed.
- 6.6 Of particular note with respect to the criteria in Appendix 1:
- The rarity of indigenous biodiversity has been elevated, with rarity containing 12 attributes which can all qualify an area as significant. The attributes are also defined in such a way that there is little vegetation or habitat that will not trigger at least one of them;
  - The importance of representativeness has been diminished, with this criterion traditionally considered by professional ecologists to be the key criteria for determining the significance of an area. Important and measurable qualities of representativeness have also been removed with ambiguous and ill-defined qualifiers;

- Common species and modified systems will be captured as significant, as well as indigenous vegetation that is part of rural landscapes (e.g. manuka, kanuka) or farming infrastructure (i.e. shelterbelt vegetation); and
  - The criteria are structured in such a way that no indigenous vegetation or habitat will likely be found to have less than ‘moderate’ ecological value (i.e. there is no framework for areas to be classified as having ‘low’ ecological value).
- 6.7 Overall, Trustpower request that Appendix 1 be replaced with the original set of significance criteria proposed for the Biodiversity Collaborative Group.
- 6.8 Finally, Trustpower is opposed to the classification of significant natural areas as either ‘high’ or ‘medium’ via the attributes listed in Appendix 2. The classification of significant natural areas in such a way is an artificial construct and not necessary to achieve the requirements of Section 6(c) of the RMA. This two-tiered management regime is also not typically adopted by local authorities in most second-generation regional and district planning documents.
- 6.9 Trustpower understands that approximately 70% of significant natural areas across New Zealand will qualify as ‘high’ based on the broad nature of the attributes listed in Appendix 2, and the fact that a significant natural area only needs to achieve only one of 29 listed attributes in order to qualify as significant. Areas of significant natural areas that contain a handful of trees that are ‘at-risk’ would qualify the entire significant natural area as an area of ‘high’ significance.
- 6.10 The low bar for categorising areas as ‘high’ significance effectively precludes any potential consideration of opportunities to manage the adverse effects of development, regardless of the benefits of the proposal. Trustpower consider that the consequence and cost of this approach has not been fully considered, particularly given the relationship between the current extent of significant natural areas and nationally significant infrastructure (as already discussed above).
- 6.11 In light of the above, Trustpower recommends that the Section 3.8 be amended as follows:

### **3.8 Identifying significant natural areas**

*(1) Every territorial authority must–*

*(a) undertake a district wide assessment in accordance with Appendix 1 to determine if an area is significant indigenous vegetation and /or significant habitat of indigenous fauna; and if it is,*

~~*(b) classify areas of significant indigenous vegetation and /or significant habitat of Indigenous fauna as either High or Medium, in accordance with Appendix 2.*~~

*(2) Territorial authorities must use the following principles and approaches when undertaking the assessment and classification required by subclause (1).*

*(a) partnership: territorial authorities must seek to engage with landowners early and share information about indigenous biodiversity, potential management options and any support and incentives that may be available:*

*(b) transparency: territorial authorities must clearly inform landowners about how information gathered will be used and make existing information, draft assessments and other relevant information available to relevant landowners for review:*

- (c) *quality: ~~wherever practicable~~, the values and extent of natural areas assessed as potentially meeting the criteria in Appendix 1 for classification as an SNA ~~should~~ must be verified by physical inspection:*
- (d) *access: where permission to access a property on a voluntary basis is not given, territorial authorities should first rely on a desktop assessment by an ecological expert, and powers of entry under section 333 of the Act should be used only as a last resort:*
- (e) *consistency: the identification of an SNA must be based on the indigenous biodiversity present, identified through the consistent application of the criteria in Appendix 1, and regardless of who owns the land*
- (f) *boundaries: an area assessed as significant indigenous vegetation and significant habitat of indigenous fauna must be determined by the extent and ecological integrity of the indigenous vegetation or habitat as whole, unaffected by artificial margins such as property boundaries.*
- (3) *Territorial authorities must comply with subclauses (1) and (2) within five years after the commencement date.*
- (4) *Subclauses (1), (2) and (3) do not apply where territorial authorities have demonstrated that areas identified as significant indigenous vegetation and significant habitat of indigenous fauna in policy statements or plans, substantially conform with Appendix 1 through an assessment by a suitably qualified ecologist, within three years after the commencement date.*
- ~~(5) Territorial authorities that demonstrate conformance as per subsection (4) must classify these areas as High or Medium in accordance with Appendix 2 within five years after the commencement date.~~
- (6) *Territorial authorities must notify any plan or plan change necessary to map areas identified in subclauses (1) and (2) and to give effect to subclauses (1), (2), (3), (4) and (5) within six years of the commencement date.*
- (7) *Every 10 years, territorial authorities must update district plans, following subclauses (1) and (2).*
- (8) *At least every two years after completing the requirements of subclause (6), every territorial authority must notify a plan change, where practicable, to add any area that has been identified as an SNA (in accordance with the criteria in Appendix 1) as a result of an assessment undertaken as part of a resource consent application, notice of requirement for designation or any other means, so that the plan –*
  - a) *maps the area; and*
  - b) *sets out its attributes; ~~and~~*
  - ~~c) records whether it is classified as High or Medium.~~

6.12 It is also submitted that Appendix 1 of the Draft NPS be replaced with the original set of significance criteria proposed for the Biodiversity Collaborative Group (which are appended to this submission), and that Appendix 2 be deleted.

## 7.0 MANAGEMENT OF SIGNIFICANT NATURAL AREAS

- 7.1 The overarching policy framework that applies to the management of significant natural areas in the Draft NPS seeks to maintain indigenous biodiversity and protect areas of significant natural areas, which reflects the expectations of the RMA and most second-generation regional and district planning documents across New Zealand. The policy framework also acknowledges in part (i) the need to allow people and communities to provide for the social, economic and cultural wellbeing, and (ii) that local constraints apply to some forms of subdivision, use and development.
- 7.2 Notwithstanding the overarching policy framework, the Draft NPS establishes a management regime for significant natural areas via Section 3.9 that effectively removes most consenting pathways for nationally significant infrastructure. This is despite the NPSREG recognising the need to operate, upgrade and develop renewable electricity generation as a matter of national significance, and the Government having made commitments to reduce greenhouse gas emissions and transition to 100% renewable electricity generation by 2035. For the reasons discussed below, the achievement of these commitments will be significantly compromised if the Draft NPS is gazetted in its current form.
- 7.3 As already discussed in this submission, it is expected that approximately 70% of significant natural areas will be identified as being of ‘high’ significance. All potential adverse effects in these areas are to be avoided under the Draft NPS. As noted in the *King Salmon* decision<sup>2</sup>, any reference to the avoidance of adverse effects in a policy statement or planning document means “not allowing” or “preventing the occurrence of”. In practice, this will likely mean that all development in these areas is classified as a prohibited activity (or a non-complying activity at best) in regional and district planning documents – preventing the potential merits of a proposal even being presented to decision-makers and the wider community.
- 7.4 This approach to the management of ‘high’ significant natural areas is particularly problematic given the relationship between these areas and existing infrastructure. Under this policy framework it would not be possible for Trustpower to even apply for resource consents to:
- Operate the emergency spillway at the Kaimai HEPS to the significant natural area located downstream (and identified in the Western Bay of Plenty District Plan); or
  - Clear indigenous vegetation in order to maintain the ground deformation and seismic stability monitors for the Matahina HEPS.
- 7.5 The inability to apply for such resource consents has operational and dam safety implications for Trustpower that would not be able to be remedied.
- 7.6 With respect to ‘medium’ significant natural areas, it is noted that the adverse effects to be avoided via Section 3.9(1)(a) cover all of the adverse effects commonly represented by development that impacts on indigenous vegetation or habitats of indigenous fauna – and represent an absolute constraint on development. As such, opportunities to remedy, mitigate, offset or compensate for the adverse effects of development are likely to be extremely rare. This will mean that environmental initiatives that have been undertaken by Trustpower and other infrastructure providers to date, and which have improved the environment, will be precluded.

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<sup>2</sup> *Environmental Defence Society of New Zealand v The New Zealand King Salmon Company Ltd* [2014] NZSC 38

- 7.7 Trustpower considers that there is also no statutory basis under the RMA for seeking that adverse effects in significant natural areas be managed in a hierarchical approach that requires for all 'possible' options to be extinguished before an applicant can even progress to the next tier of management. What is 'possible' takes no account for cost implications, technical feasibility or broader issues. The Draft NPS propose a burden of proof for resource consent applicants managing potential adverse effects on indigenous biodiversity that is unreasonably high and will be unworkable in practice.
- 7.8 In light of the above, Trustpower consider that the management of adverse effects on significant natural areas (be they 'high' or 'medium') in the Draft NPS should be focussed on ensuring that the key values / attributes of these areas are protected – as opposed to requiring a one-size fits all effects management cascade. In some instances, this may mean that development is inappropriate because the key values / attributes will not be protected, however in other instances there may be remediation, mitigation or compensatory measures that ensure that the key values / attributes of the significant natural area is protected.
- 7.9 If the effects management hierarchy is to be retained in the Draft NPS, then it should be amended to focus on providing equally for biodiversity offsetting or compensatory measures by resource consent applicants when addressing residual adverse effects. There are very few examples across New Zealand where fully developed offsetting proposals have been offered and implemented by a project proponent – and those which have been contested between parties. Trustpower consider that greater environmental outcomes can be, and have been, achieved where environmental compensation initiatives have been offered by project proponents.
- 7.10 In addition, biodiversity offsetting or environmental compensation should be focused on addressing significant residual effects that cannot be avoided, remedied or mitigated. The extent of residual effects that can be offset has been considered and determined by the Independent Hearing Panels that heard submissions on the Auckland Unitary Plan and the Replacement Christchurch District Plan. Both plan hearing process were chaired by members of the judiciary, and both processes concluded that significant residual adverse effects should be the focus of any biodiversity offsetting that is proposed. The reasoning given noted the extra rigour and resourcing required to implement a biodiversity offset, and that this should be linked to significant residual adverse effects.
- 7.11 In light of the above, Trustpower recommends that Section 3.9 be deleted and replaced with the following:

**3.9 Managing adverse effects on SNAs**

(1) Local authorities must ensure that, in relation to any new subdivision, use or development that takes place in or affects, an SNA –

(a) The subdivision, use or development is associated with:

(i) nationally significant infrastructure; or

(ii) mineral and aggregate extraction; or

(iii) the provision of papakainga, marae and ancillary community facilities associated with customary activities on Māori land; or

(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; or



- (v) a single dwelling on an allotment created before the commencement date and where there is no location within the existing allotment where a single, residential dwelling and essential associated on-site infrastructure can be constructed in a manner that avoids the adverse effects on the significant natural area.
- (b) there is a functional or operational need for the subdivision, use or development to be in that particular location;
- (2) Subclause (1) does not apply to managing adverse effects in the following circumstances:
  - (a) the adverse effects arising from a use or development that is for the purpose of protecting, restoring or enhancing an SNA;
  - (b) the adverse effects arising from a use or development that addresses a severe and immediate risk to public health or safety;
  - (c) an area comprising kānuka or mānuka and that is identified as an SNA solely because it is at risk from myrtle rust;
  - (d) indigenous vegetation or habitat of indigenous fauna established and managed for a purpose other than the maintenance, restoration or enhancement of indigenous biodiversity, and the use or development is necessary to meet that purpose.
- (3) In subclause (1)(b) –
  - functional need** means the need for a proposed activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment
  - operational need** means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

7.12 If the effects management regime is to be retained, then Trustpower also recommends that its definition be amended as follows:

***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~~ as far as practicable;*
- b) *adverse effects that cannot be ~~demonstrably~~ avoided are remedied ~~where possible~~;*
- c) *adverse effects that cannot be ~~demonstrably~~ remedied are mitigated; ~~and~~*
- d) *in relation to significant residual adverse effects that cannot be avoided, remedied or mitigated, consideration is given to biodiversity offsetting or biodiversity compensation proposed by an applicant 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.*

- 7.13 The definitions of biodiversity compensation and biodiversity offsetting should also be consequentially amended as follows:

**biodiversity compensation** means a conservation outcome resulting from actions that comply with the principles in Appendix 4 and compensate for significant residual, adverse biodiversity effects from subdivision, use or development ~~after all appropriate avoidance, remediation, mitigation and biodiversity offset measures have been sequentially applied.~~

**biodiversity offset** means a measurable conservation outcome resulting from actions that comply with the principles in Appendix 3 and are designed to:

- a) compensate for significant residual adverse biodiversity effects arising from subdivision, use or development ~~after appropriate avoidance, remediation and mitigation measures have been sequentially applied; and~~
- b) achieve a no net loss of and preferably a net gain to, indigenous biodiversity values.

## 8.0 MANAGEMENT OF NON-SIGNIFICANT AREAS

- 8.1 As with significant natural areas, Trustpower considers that the requirement to manage non-significant natural areas in accordance with a defined effects management hierarchy (as set out in Section 3.13(1)(b) of the Draft NPS) should be deleted. The management of adverse effects on non-significant natural areas should be focussed on ensuring that the key values / attributes of these areas are maintained in accordance with Section 30(1)(ga) and 31(1)(b)(iii) of the RMA. The package of measures necessary in order to maintain indigenous biodiversity will inevitably vary to sites / projects. However, provision should be made for resource consent applicants to promote whatever range of measures they consider is necessary in order to ensure the responsibilities for indigenous biodiversity under the RMA and Draft NPS are met. Whether the package of measures is appropriate will be determined by the decision-maker on the resource consent application.
- 8.2 If the effects management hierarchy is to be retained in the Draft NPS, then it should be amended to focus on not requiring a strict burden of proof through the cascade of management options and clearly provide for biodiversity offsetting or compensatory measures by resource consent applicants – as noted above in relation to the submission on the management of significant natural areas.
- 8.3 Furthermore, Trustpower does not consider it appropriate for non-significant areas to be treated as if they were significant natural areas (and identified in a statutory planning document) during a resource consent process – as is permissible under Section 3.13(2) and the definition of ‘significant natural area’ in the Draft NPS.
- 8.4 Landowners and resource consent applicants require certainty as to how areas of indigenous vegetation or habitats of indigenous fauna have to be managed before embarking on a project. However, the Draft NPS allows areas to be ‘reclassified’ as significant natural areas as part of an assessment of environmental effects for a resource consent application – but without providing recourse for all relevant parties to submit on the classification process. In this regard, neighbouring landowners who have indigenous vegetation that is connected may find that an area is classified as ‘high’ significant natural area based upon a resource consent application by a neighbour that was not limited or publicly notified.

- 8.5 All additions of significant natural areas to regional and district planning documents should be via a plan change in accordance with Schedule 1 of the RMA.
- 8.6 Section 3.15 of the Draft NPS requires local authorities to survey and (where possible) map / describe the location of highly mobile fauna areas. It goes on to direct that local authorities include objectives, policies or methods in their statutory planning documents for managing adverse effects on highly mobile fauna.
- 8.7 While the requirement for local authorities to include provisions in their statutory planning documents regarding the management of adverse effects on highly mobile fauna is acknowledged by Trustpower, the responsibility on local authorities to survey and map the location of such fauna is likely to be onerous and result in mapping in statutory planning documents that is inaccurate. In this regard, it is Trustpower's experience with the consenting of wind farms in Australia and New Zealand over the last 20 years that determining the specific flight path or migratory routes of threatened or at-risk bird species can require multiple seasons of data. Without such data, local authorities will inevitably end up mapping areas with a high degree of inaccuracy.
- 8.8 Furthermore, the requirement to identify areas where highly mobile fauna 'are likely to be present some of the time' is ambiguous and will lead to the speculative assessment of areas as habitat of highly mobile fauna.
- 8.9 In light of the above, Trustpower recommends that Sections 3.13, 3.14 and 3.15 of the Draft NPS be amended as follows:

### **3.13 General rules applying outside SNAs**

- (1) *Local authorities must take steps to maintain indigenous biodiversity outside SNAs, including by making or changing their policy statements and plans to do all the following:*
- a) *specify where, how and when controls on subdivision, use and development in areas outside SNAs are necessary to maintain indigenous biodiversity;*
  - ~~b) apply the effects management hierarchy to adverse effects, except that biodiversity compensation may be considered as an alternative to biodiversity offsetting (and not only when biodiversity offsetting is not demonstrably achievable);~~
  - ~~c) specify where, how and when, for any area outside an SNA, the assessment and classification required by clause 3.8(1) is required.~~
- (2) ~~If an area outside an SNA is assessed as significant indigenous vegetation and significant habitat of indigenous fauna following an assessment in accordance with Appendix 1, a local authority must manage the adverse effects on indigenous biodiversity in the area as if the area were an SNA.~~
- (3) *In preparing policy statements and plans giving effect to subclause (1), local authorities must have particular regard to the potential of Māori land to provide for the social, cultural and economic wellbeing of Māori.*

### **3.14 Identified taonga**

- (1) Every regional council must work together with all the territorial authorities in its region and with tangata whenua (in the manner required by clause 3.3) to agree a process for –
  - a) identifying indigenous species and ecosystems that are taonga; and
  - b) describing the taonga; and
  - c) mapping or describing the location of the taonga; and
  - d) describing the values of each taonga.
- (2) Local authorities must recognise tangata whenua have the right to choose not to identify taonga and to choose the level of detail at which identified taonga or their location or values, are described.
- (3) Territorial authorities must make or change their district plans to include (to the extent agreed to by tangata whenua) the description of identified taonga and their values and a description or map of their location.
- (4) Local authorities must manage identified taonga in a manner that located in an SNA in accordance with clause 3.9.
- ~~(5) In relation to identified taonga located outside SNAs, local authorities must –~~
  - ~~a) manage them as necessary to protect the maintains taonga and their values; and~~
  - ~~b) provide opportunities to restore and enhance them and their values.~~

### **3.15 Highly mobile fauna**

- ~~(1) Every regional council must work together with the territorial authorities in its region to survey and record areas outside SNAs where highly mobile fauna have been, or are likely to be, sometimes present (in this clause referred to as highly mobile fauna areas).~~
- ~~(2) If it will help manage highly mobile fauna, a territorial authority must (where possible) include in its district plan a map or description of the location of highly mobile fauna areas.~~
- ~~(3) Local authorities must provide information to their communities about –~~
  - ~~a) highly mobile fauna and their habitats; and~~
  - ~~b) best practice techniques for managing adverse effects on any highly mobile species in their regions and districts, and their habitats.~~
- (4) Local authorities must include objectives, policies or methods in their policy statements and plans for managing the adverse effects of subdivision, use and development in highly mobile fauna areas, as necessary to maintain viable populations of highly mobile fauna across their natural range.

8.10 Furthermore, Trustpower recommends that the definition of ‘significant natural area’ be amended as follows:

***SNA or significant natural area, means –***

- a) *an area identified as an SNA in a district plan or proposed district plan in accordance with clause 3.8;*
- b) *an area identified, before the commencement date, in a policy statement or plan or proposed policy statement or plan, as an area of significant indigenous vegetation or significant habitat of indigenous fauna, regardless of whether the area is referred to as a SNA or in any other way; ~~or~~*
- c) ~~*an area identified as an area of significant indigenous vegetation or significant habitat of indigenous fauna as part of an assessment of environmental effects*~~

## 9.0 RESTORATION OF INDIGENOUS BIODIVERSITY

9.1 While Trustpower recognise that the restoration of indigenous biodiversity is important to improve overall indigenous biodiversity, the measures proposed in the Draft NPS are not supported by the company.

9.2 Trustpower considers that it is more appropriate for Objective 5 to focus on the promotion of opportunities to restore indigenous biodiversity, rather than suggest a potential absolute requirement to restore biodiversity. An unintended consequence of this objective as currently drafted is resource consent applicants needing to demonstrate in any proposal that they are restoring or enhancing biodiversity to show consistency with the Draft NPS.

9.3 Furthermore, the potential requirement to require local authorities to identify priority areas for restoration and impose restoration conditions or review existing resource consents under Section 3.16(6) is problematic, and not supported by Trustpower. The areas identified for restoration will likely be located on private property, and potentially infringe on areas that are periodically utilised for infrastructure activities (e.g. laydown areas, former wetlands drained as part of river diversion works).

9.4 In addition, land use consents for the development of infrastructure or land use change are often only exercised in order to enable the initial construction work. There can be many years between the necessary works being undertaken and a local authority now seeking to review the consent conditions to require restoration initiatives to be implemented.

9.5 In light of the above, Trustpower recommends that Objective 5 be amended as follows:

***Objective 5: Promote opportunities to restore indigenous biodiversity and enhance the ecological integrity of ecosystems.***

9.6 Section 3.16(6) should also be deleted from the Draft NPS.

## 10.0 OTHER MATTERS

10.1 Through its review of the Draft NPS, Trustpower have identified a number of other issues that require addressing in order to improve its potential implementation and effectiveness. These are discussed as follows.

- Hutia Te Rito is aspirational and broadly framed, such that it is potentially capable of multiple interpretations that will result in extended implementation timeframes whilst that ambiguity is resolved.

This fundamental concept adds no further certainty for local authorities, decision-makers or landowners. As such, and in line with the commentary earlier in this submission regarding the need for provisions to be clear and provide certainty for all users of the Draft NPS, Trustpower considers that is more appropriate for regional councils and territorial authorities to ‘consider and recognise’ Hutia Te Rito in the management of indigenous biodiversity, rather than recognising and actively ‘providing’ for it. This approach would align with the draft of the National Policy Statement for Freshwater Management and its approach to Te Mana o te Wai.

**Objective 3:** *To consider and recognise ~~and provide for~~ Hutia Te Rito in the management of indigenous biodiversity.*

### 3.2 Hutia Te Rito

(1) *Local authorities must consider and recognise ~~and provide for~~ Hutia Te Rito in implementing this National Policy Statement.*

(2) *This requires, at a minimum, that local authorities must –*

a) *recognise and provide for the interrelationships between te hauora o te tangata (the health of the people) and –*

i. *te hauora o te koiora (the health of indigenous biodiversity); and*

ii. *te hauora o te taonga (the health of species and ecosystems that are taonga); and*

iii. *te hauora o te taiao (the health of the wider environment); and*

b) *recognise the maintenance of indigenous biodiversity requires kaitiakitanga and stewardship; ~~and~~*

c) ~~*take steps to ensure indigenous biodiversity is maintained and enhanced for the health, enjoyment and use by all New Zealanders, now and in the future.*~~

- Policy 2 and Section 3.6 should be deleted from the Draft NPS. The RMA already provides sufficient safeguards for decision-makers to ensure that proposals do not have unintended effects. This includes (i) allowing decision-makers to requiring the staged development of a proposal, (ii) imposing consent conditions enabling the review of consents to deal with any adverse effect on the environment which were not anticipated, (iii) the provision of monitoring of the effects of activities as they proceed, and (iv) declining resource consent applications where necessary.

Adding additional policy direction that simply states that local authorities must adopt a precautionary approach will not be effective.

- The definition of ‘nationally significant infrastructure’ should not define what renewable electricity generation facilities are nationally significant based on the transmission infrastructure that is utilised to convey electricity. This approach would mean that the Mangahao HEPS (38 MW) is deemed to be nationally significant infrastructure, but the larger Kaimai HEPS (41 MW) is not. Such an approach is non-sensical, particularly given the NPSREG has identified that all renewable electricity generation activities are matters of national importance and the importance of the contribution of renewable electricity generation, regardless of scale, towards addressing the effects of climate change.

In light of the above, it is considered that clause (c) of the definition of nationally significant infrastructure be amended as follows:

(c) ~~National~~ *Renewable electricity generation facilities that connect with the national grid or a distribution network:*

- The definition of indigenous vegetation should be amended so as to ensure that individual native plants within an area of exotic vegetation are not inappropriately characterised as an area of indigenous vegetation. In this regard, native plants should be the predominant vegetation in an area – otherwise there is potential that grasslands / pasture that contains pockets of native plants will be inappropriately classified as indigenous vegetation.

In light of the above, Trustpower recommend that the definition of indigenous vegetation be amended as follows:

***Indigenous vegetation*** means a predominant community of vascular and non-vascular plants that, in relation to a particular area, are native to the ecological district in which that area is located.