

In reply please quote WDC Submission on NPS Indigenous Biodiversity  
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Tēnā koe

***Whangarei District Council Submission to the National Policy Statement on Indigenous Biodiversity***

***Introduction and Background***

Whangarei District Council (WDC) welcomes the opportunity to provide feedback on the proposed National Policy Statement on Indigenous Biodiversity (NPSIB) and supports the overall objective to maintain biodiversity. In general, WDC is supportive of the approach taken in the NPSIB to identify SNA's and considers national guidance useful to provide a coordinated approach to managing native plants, animals, and ecosystems under the Resource Management Act (RMA).

WDC does have concerns over the provisions managing biodiversity and in particular the cost implications and complexity of the NPSIB. We recommend that the NPSIB be made simpler, clearer and more concise. We also consider that there is significant overlap and interaction with other national policy documents (NZCPS, and NPS's for plantation forestry, urban development, and electricity transmission) and other processes (Mana Whakahono a Rohe, and Schedule 4 of the RMA). WDC has concerns over the difficulty that this presents in ensuring that plans can give effect to the provisions of the NPSIB consistently across the country.

WDC are responsible for the maintenance of biodiversity in the terrestrial environment under s31 of the Act. To achieve this, and to give effect to the requirements of the Northland Regional Policy Statement (NRPS), WDC recently joined with Far North District Council and Kaipara District Council to undertake a mapping project to identify Significant Natural Areas (SNA's) across the Northland Region.

This project has been prepared in accordance with the Biodiversity Collaborative Group's Draft NPSIB. The project has required a significant investment both financially and in terms of staff and stakeholder time and input across the three TLA's. This project is consistent with the requirements of Appendix 1 of the NPSIB, therefore, WDC supports the criteria in Appendix 1 and already has a good grasp of the requirements that the approach set out in the NPSIB will place on Councils if adopted.

The Whangarei District is some 285,000ha and contains a wide mosaic of ecosystems. The Northland mapping project identified 28% (approximately 80,000ha) of the Whangarei District as SNA, with approximately two thirds of that in private ownership. The proposed SNA affects over 10,000 ratable parcels that WDC will need to consult with landowners on as part of the District Plan change. The consultation requirements will represent a significant cost to Council and ratepayers.

Approximately 55% of the area identified as SNA is on private land with no formal protection, either by covenant, or district plan policy (e.g. Outstanding Natural Landscapes). This is the land that will be most impacted by the NPSIB. Approximately 8% of SNA's identified are on Maori land which represents about half of the Maori land in the District. The impact of the NPSIB on the utilisation of Maori land will be significant.

The following submission is structured around the key issues identified by WDC in the NPSIB. The comments in this submission are mainly limited to the jurisdiction of territorial authorities (TLA's) i.e. ecological management in the terrestrial environment (including wetlands).

## **1. Structure of the NPSIB**

The NPSIB is different in structure to previous NPS's, with a limited section in Part 2 devoted to objectives and policies, and Part 3, which sets out in detail how the objectives and policies should be implemented, or given effect to.

WDC supports the objectives and policies insofar as they are clear and concise, however, in our opinion many of the policies read as objectives. In particular Policies 3, 4, 5, 8, 10, 11, 12, 14, and 15 all contain statements setting out what is to be achieved, but do not contain any detail on how they will be achieved. This detail is contained in Part 3.

District Plans are required to give effect to National Policy Statements. If the new structure of the NPSIB is adopted, it is unclear whether these plans need to give effect to the implementation requirements, or if plans will comply with the Act provided they give effect to the objectives and policy sections. Some clarification would assist around whether the implementation requirements carry the same statutory weight as the objectives and policies. If the implementation requirements are to be given effect to in addition to the objectives and policies, it would assist TLA's if the Part 3 requirements were reordered, or cross referenced to clearly show which objective they relate to.

**Relief Sought: Amend the objectives listed above that read as policies, and provide guidance on how councils should give effect to implementation measures.**

## **2. Scope of the NPSIB**

The NPSIB is proposed to apply to only the terrestrial ecosystems and not to freshwater or the coastal marine area. Many species use marine/freshwater as well as terrestrial habitats and can often transition between these habitats at different stages of their lifecycles.

WDC considers that the management of biodiversity should depend on what is being managed and why, rather than the organisation responsible for managing the habitat. In our view restricting the NPSIB to terrestrial ecosystems will make integrated management across jurisdictional boundaries difficult, particularly given the requirements of Section 3.4 of Part 3 which seems to contradict the restriction in scope of the NPSIB.

To ensure the consistent and integrated management across boundaries WDC also supports that the application of the NPSIB is tenure neutral.

**Relief sought: Expand the scope of the NPSIB to cover the CMA and other water bodies.**

### **3. The Concept of Hutia Te Rito**

WDC supports the intent to incorporate matauranga maori in the protection of indigenous biodiversity. However, WDC considers that including the concept of Hutia te Rito in the NPSIB is unclear and may be problematic.

The discussion document provides explanatory text that contains a number of examples of how Hutia te Rito could be implemented through the NPSIB. It appears from the guidance that there are significant overlaps with other processes (for example through Mana Whakahono a Rohe agreements). These provisions will duplicate existing processes that TLA's already have in place to foster better relationships with iwi/hapu, and facilitate input and involvement from mana whenua in decision making. This also applies to the provisions in 3.14 Identified Taonga.

Given that TLA's are required to give effect to NPS's in their plans, WDC considers that the objectives and policies in the NPSIB should be clear and easily understood to ensure consistent implementation of the NPS.

**Relief sought: Remove references to Hutia te Rito.**

### **4. Definition of indigenous vegetation**

WDC supports the inclusion of a definition for indigenous vegetation. A consistent definition across the country will avoid the duplication of costs involved with plan change preparation and litigation over what is defined as indigenous vegetation.

**Relief sought: Retain the definition of indigenous vegetation.**

### **5. Identifying important biodiversity and taonga**

WDC supports the use of the criteria by TLA's to identify and map terrestrial SNA. We also generally support the criteria set out in Appendix 1 of the NPSIB and consider it to be clear and easily interpreted and applied by ecologists. The criteria is consistent with the criteria set out in the NRPS that was used by Wildlands Consultants Ltd to Map SNA in the Northland Region.

We do however have concerns about basing mapping of SNA's on the Appendix 1 criteria in Section C - Rarity and Distinctiveness, particularly in relation to highly mobile species. For example, the Whangarei District supports a growing population of Northland Brown Kiwi which are classified as an "At Risk" species. Kiwi cover a wide range of habitat including pine forest, pampas, gorse, pasture, and other areas that would generally not be considered as SNA's were it not for the presence of a threatened or at risk species. We consider that if highly mobile fauna is included in the criteria there is a risk of capturing too much land area in an assessment of SNA's in a region. This will significantly affect private land and could undermine the intent of the mapping project, resulting in public opposition to future plan changes to implement the NPSIB. The approach currently taken by WDC to protecting highly mobile fauna (kiwi and pateke) is consistent with the approach set out in Implementation measure 3.15(1) and (3), however given the nature of these species we do not agree with including their natural range in District Plan Maps.

WDC also supports the direction in 3.8(4) that where councils have already comprehensively identified SNA's and that the assessment substantially conform with Appendix 1, that the exercise is not required to be repeated.

**Relief sought: Review the use of threatened or at risk fauna as a criteria for SNA.**

**Retain implementation measure 3.8(4).**

## **6. Medium and High value Significant Natural Areas**

Section 3.8 of the NPSIB provides that all SNA's are classified as High or Medium in accordance with Appendix 2. This is a new approach to that outlined in the draft NPS, and has not been used in the current SNA mapping project in Northland. In past court cases in Whangarei the approach to having more than one level of significance has been rejected (Whangarei DC vs Ngati wai). WDC considers that there should only be one level of SNA and that if an area meets the criteria to be considered significant, it should be managed as such.

Having two levels, with lower restrictions on medium will lead to significant increases in the cost of identifying and implementing SNA's in District Plans. We anticipate that this approach would result in an influx of submissions and appeals from landowners seeking to have their SNA's downgraded to the lower level to enable some form of use. This will significantly increase the costs to councils, landowners and infrastructure providers through the plan change process, as well as increasing the potential for cumulative losses in biodiversity.

**Relief sought: Remove the requirements relating to medium SNA and Appendix 2**

## **7. Management approach**

Section 3.9 sets out that adverse effects must be avoided in high value SNA and provides for limited development in medium value SNA (where a number of conditions are met). This creates a 3 tier system of management (High, Medium or Outside SNA). In our view this management approach is complicated as the values of an area may change over time. The ambiguity will lead to costly arguments over the values of the SNA and which management regime applies. We consider that there should be 2 tiers of management for land within identified SNA's and for land that is not.

Through our current SNA mapping project we have identified 422 privately owned parcels, and 60 Maori land parcels that are 100% covered by an SNA. A further 499 private land parcels and 96 Maori land parcels have over 80% SNA coverage. The proposed management regime in the NPSIB would effectively render this land unusable. In our view the NPSIB should provide for at least the establishment of a single dwelling (with access) on each parcel. The development of papakāinga should also be provided for on Maori land. These activities are unlikely to have significant effects on ecosystems and may be managed through the effects management hierarchy with appropriate consent conditions.

Under the proposed NPSIB the ability to offset effects does not apply to high value SNA. WDC consider that a standard rating should be applied to all SNAs and that offsetting should be allowed provided that a net environmental gain can be provided. Achieving a net environmental gain (or at least no net loss) is consistent with the objective of the maintenance of biodiversity, and provides a better balance between development and protection, for people and the environment in accordance with the purpose of the Act.

**Relief sought: Include provisions that allow landowners reasonable use of their land and provide for offsetting within SNA.**

## **8. Consistency with other National Policy Statements**

There are now difficulties with balancing multiple national policy statements and environmental standards such as the New Zealand Coastal Policy Statement (NZCPS), National Policy Statement for Freshwater Management, National Policy Statement for Urban Development Capacity, National Policy Statement for Electricity Transmission and the National Environmental Standards for Plantation Forestry. Each of these documents seek to either manage a resource through restrictive policy, or seek to enable certain activities. WDC see a tension between the outcomes sought by multiple national policy statements, and considers it is essential that this policy framework is aligned.

This is particularly a difficult issue for the WDC as the full range of policy statements and environmental standards apply and overlap within our District, and all must be given effect to. It is important that there is national government direction as to how to balance the competing policy statements, and the amount of weighting that should be given to each in a situation where they are in conflict.

WDC considers that there is insufficient guidance to set out how the policies should be considered through decision making at a local government level. This creates a risk that the balancing exercise will fall to local authorities in plan development and resource consenting, leading to inconsistent management of biodiversity across the country.

WDC recognises that that section 1.5 sets out that the NZCPS takes precedence but recommends that clear guidance be provided that set out how other national guidance is be balanced and reconciled, rather than it being left to individual councils to determine.

To date biodiversity in the terrestrial coastal environment has had a greater level of protection than other biodiversity under the NZCPS. We note that the NZCPS (2010) is now due to be renewed. WDC consider that the policies that guide the management of biodiversity in the coastal environment should be informed by the more recent NPSIB to ensure consistency between these documents so that biodiversity in the terrestrial coastal environment is not given a higher level of protection than other terrestrial biodiversity.

**Relief sought: Provide guidance on the hierarchy of national policy documents.**

## **9. Restoration and Enhancement**

Section 3.16 directs TLA's to identify SNA's whose ecological integrity is degraded and promote the restoration and enhancement of these areas. If habitat is degraded in many cases it will not achieve the criteria to be considered as an SNA in the mapping exercise and will not be afforded the protection that SNA receive. We assume that this section is supposed to apply to the 'medium' SNA's however this is not clear.

In WDC's view methods to promote restoration and enhancement should apply to all areas, not just degraded SNA's. The tools to incentivize restoration and enhancement may not necessarily be delivered best through an RMA process.

Our analysis has identified that 55% of SNA's in the Whangarei District are privately owned and currently unprotected either by covenants, or district plan provisions. If TLA's are to achieve the maintenance of indigenous biodiversity they will have to rely on the management of private

landowners. We believe that the NPSIB needs to ensure that having land which is recognised as an SNA is viewed as an asset, rather than a liability by the public and property owners.

WDC considers that facilitating a positive outlook of maintenance and enhancement of indigenous biodiversity through providing incentives under other legislation, rather than enforcing it through heavy regulation, will better achieve the maintenance of indigenous biodiversity. We also consider that if a heavy handed approach is taken there is a significant risk that landowners will remove indigenous vegetation to avoid being classified as an SNA before rules can be notified to protect these areas.

**Relief sought: Delete section 3.17.**

## **10. Cost Implications of the NPSIB**

The NPSIB will introduce a range of measures that will increase costs on Councils (ratepayers), landowners, Maori and Infrastructure providers. We see significant cost implication in developing the plan change, consultation with landowners, statutory consultation and notification, and litigation. In our view this will be exacerbated if SNAs are classified as high or medium with a onerous regulatory regime. This will create a powerful incentive to litigate to avoid becoming an SNA, or to downgrade the classification of the SNA from high to medium.

Section 3.19 repeats the provisions of Schedule 4 of the Act and will require every resource consent that contains an area of indigenous vegetation or a habitat of indigenous fauna to make an assessment against Appendix 1. This will need to be done by a qualified ecologist and will increase the cost of consenting, and the time it takes to prepare and assess resource consents. WDC recommends that this clause be removed

3.8(8) requires TLAs to notify a plan change every 2 years to include new areas of SNA that have been identified through resource consent processes into the District Plan Maps. In our view this will be inefficient and costly to ratepayers as plans are already required to be reviewed on a regular basis under the RMA. We recommend that this provision be deleted or at a minimum changed to 5 years to provide for one interim review in the 10 year plan review cycle.

**Relief sought: Remove references to high and medium SNA.**

**Remove Section 3.19.**

**Remove Section 3.8(8).**

## **11. Conclusion**

WDC supports the intent of the NPSIB and in particular the approach of identifying and managing SNA's with a higher level of protection to biodiversity in general. We consider that perhaps the NPSIB goes too far in places, and duplicates requirements that are already provided for appropriately in the RMA, and other processes such as Mana Whakahono a Rohe. We strongly disagree with the classification of high and medium SNA's and recommend that the provisions relating to medium SNA be deleted. In terms of the management of SNA's we consider the proposed management regime to be too restrictive, particularly on private landowners and Maori land where a SNA covers all or a large proportion of their property. WDC seek amendments to ensure that this land is still able to be utilised to an appropriate extent.

Whangarei District Council welcomes further opportunity to provide feedback on the NPSIB. If there are any questions or points of clarification needed on our submission please contact Melissa McGrath, Manager – District Plan, at [melissa.mcgrath@wdc.govt.nz](mailto:melissa.mcgrath@wdc.govt.nz).

Nāku noa, nā

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