



FEEDBACK ON DRAFT NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY – EXPOSURE DRAFT CONSULTATION

21 JULY 2022

Contact: David Curtis, CEO, Te Kokiringa Taumata | New Zealand Planning Institute
P: +64 9 520 6277 ext. 3 | M: +64 21 625 244 | www.planning.org.nz

Planning is essential to achieving a better New Zealand

Te Kokiringa Taumata | New Zealand Planning Institute (NZPI) is the voice of planning in New Zealand. It is the professional organisation representing this country's planners, resource managers, urban designers, and environmental practitioners.

Planners have a critical role in shaping New Zealand's future by helping to develop solutions to key issues, such as population growth, infrastructure needs, pressure on natural resources and environments, demographic change, and transport.



INTRODUCTION

1. Te Kokiringa Taumata | New Zealand Planning Institute (NZPI) welcomes the opportunity to present this feedback to the Ministry for the Environment (MfE) on the Exposure Draft of the National Policy Statement for Indigenous Biodiversity (NPS-IB). NZPI supports national direction on managing New Zealand’s indigenous biodiversity.
2. NZPI acknowledges MfE is seeking feedback on whether the proposed NPS-IB is workable. As the professional body for practicing planners, our key interest is ensuring an implementation lens is applied to policy and regulations. Overall, we are supportive of the NPS-IB, but we have identified issues with drafting and implementation. In summary, the implementation section of the NPS-IB is generally helpful and we support the publication of an implementation plan alongside the NPS-IB. But we find the objective and policies lacking strength and direction. We offer a number of solutions to improve workability of the NPS-IB and therefore improve implementation.
3. In summary, the key issues we identify and discuss in this submission relate to:
 - (a) The need to strengthen and clarify the objective and policies of the NPS-IB.
 - (b) Support for the way Te ao Māori is incorporated into the NPS-IB.
 - (c) The significant resourcing required for implementation and the time and financial support required for this.
 - (d) Clearer direction on resolving conflicts, including in relation to infrastructure and Māori land.
 - (e) The need for recognition of the role indigenous biodiversity plays in climate change mitigation.
 - (f) Greater direction on the application of the precautionary approach.
 - (g) A stronger role for regional biodiversity strategies, including incorporation of non-statutory measures.
 - (h) The need to take the opportunity to ‘future proof’ the NPS-IB against the upcoming RM Reforms.
 - (i) A number of detailed drafting amendments to ensure more efficient and effective implementation.
4. A summary of all our recommendations for amendments to the Exposure Draft of the NPS-IB is included at the end of this submission.

OBJECTIVE

5. NZPI supports strong and explicit objectives and policies in NPSs that provide meaningful direction for implementation. Greater certainty is provided, the clearer and more directive the objectives. We also support national direction that resolves conflicts between competing national direction. For example, there needs to be acknowledgement that the built, natural and cultural environments operate as one complete system and are not independent of each other, and so an NPS on an aspect of the natural environment, such as indigenous biodiversity, needs to include direction related to how that natural element interacts with the built and cultural environment.



An NPS that fails in these two tasks is going to add very little to planning practice and is unlikely to bring about change.

6. The objectives of an NPS are the anchor for the policy hierarchy that flows from them, to the policies and implementation direction in the NPS itself, to regional policy statements, through to regional and district plans and the assessment of consent applications. It is NZPI's understanding that this policy hierarchy, from national through to local, will continue under the reform, so it is worth getting it right now.
7. NZPI's assessment is that the single Objective in the NPS-IB is not particularly strong or explicit and does nothing to resolve conflicts. The objective is very high-level and is a combination of outcome and process. The objective is weakened by trying to cover all bases. Seeking to protect, maintain *and* restore indigenous biodiversity in one objective gives no indication of the complexities of the approach to managing indigenous biodiversity presented in the implementation section of the NPS. This approach includes a two-tiered hierarchy where 'protection' is applied to Significant Natural Areas (SNAs) and indigenous biodiversity outside of SNAs is 'maintained' and 'restored'. The objective would provide a much more robust anchor for the policy hierarchy that follows if it signalled this two-tiered approach.
8. NZPI supports the direction in the objective to protect, maintain and restore indigenous biodiversity "in the way that recognises tangata whenua as kaitiaki, and people and communities as stewards, of indigenous biodiversity". However, we think it would have more weight as its own objective, rather than as a process qualifier in the current objective. To this end, Policy 1¹ is drafted more like an objective than a policy, and we recommend this is lifted up to be an objective, as a replacement for limb (a) of the current objective. Te Rito o te Harakeke captures limb (a) of the current policy, and much more, and would be an appropriate focus for an objective.
9. Rather than resolve conflicts, the objective merely highlights conflicts by directing that indigenous biodiversity is protected, maintained and restored "in a way that provides for the social, economic, and cultural wellbeing of people and communities now and in the future". This adds little to the direction in the purpose statement of the RMA. Conflict is inherent in this requirement. It may not always be possible to protect indigenous biodiversity in a way that provides for social, economic and cultural wellbeing. This is a particular issue when other national direction applies, such as the NPS on Urban Development (NPS-UD), and when giving effect to Te Tiriti o Waitangi. Rather than providing direction on what to do in such a situation, the objective and policies are silent.
10. However, the implementation section of the NPS-IB is not silent on resolving conflicts – it uses the effects management hierarchy to set priorities where there are conflicts, and provides for 'specific requirements' such as Māori land and taonga. For example, 'specific infrastructure' is exempt from the requirement to avoid effects on SNAs and the infrastructure takes priority over the SNA, if, among other things, it can avoid, minimise, remedy, offset, or compensate adverse effects. If it cannot, then the SNA takes priority and the effects of the infrastructure are to be avoided. However, there is no direct policy support for using the effects management hierarchy to resolve

¹ "Indigenous biodiversity is managed in a way that gives effect to Te Rito o te Harakeke."



conflicts, or for giving priority to infrastructure and the other exceptions identified. There is also very little policy support for resolving conflicts for the 'specific requirements' for Māori land and taonga. This raises internal consistency issues with the 'protect' and 'avoid' directions in the objective and the policies – these directions will take precedence in implementation situations unless there is a clear statement that they should not. Clear policy within the NPS-IB that explicitly provides support for resolving conflicts using the effects management hierarchy, and for resolving conflicts on Māori land in favour of tikanga and kaitiakitanga, would be beneficial for implementation. If achieving the objectives of the NPS-UD is one of the reasons for the approach to using the effects management hierarchy, and giving effect to Te Tiriti o Waitangi is a reason for resolving conflicts on Māori land, then this should be explicit in the policy.

11. NZPI also has an eye to RM Reform in reviewing the NPS-IB. Changes include a focus on environmental outcomes and the requirement for the national planning framework to set directions on achieving environmental outcomes and resolving conflicts between and among environmental outcomes. The Exposure Draft of the NPS-IB would seem the perfect opportunity to try and frame the objectives as outcomes, and to provide direction on resolving conflicts.

TE AO MĀORI

Te Rito o te Harakeke (Policy 1 and Section 3.2)

12. As stated above, Policy 1 should be an objective rather than a policy.
13. We find the direction for implementing Policy 1 in Section 3.2 of the NPS-IB to be very helpful as a means to start to understand what giving effect to Te Tiriti o te Harakeke means. In particular, the minimum requirements in Clause (2) sets a clear expectation. We do wonder if the bar is set too low, by the use of 'recognise and provide for', rather than stronger direction such as 'give effect to', which is the direction in the policy. However on balance, considering the other direction in the NPS-IB on the interaction with Te ao Māori, we are supportive of the direction in Section 3.2.
14. The direction in Section 3.2 sets a positive approach to giving effect to the principles of Te Tiriti o Waitangi, which NZPI sees as essential for any planning document. We also note this requirement is expected to be in the new legislation, which should help ease integration of this aspect of the NPS-IB into the National Planning Framework.

Tangata whenua as kaitiaki (Policy 2 and Sections 3.3 and 3.19)

15. NZPI supports Policy 2, to recognise tangata whenua as kaitiaki and enable the exercise of kaitiakitanga, as well as the direction for implementing this policy in Section 3.3 of the NPS-IB. The direction in Section 3.6 is thorough and sets clear expectations of what is required. We also support the requirements of Section 3.19 on identified taonga, particularly the acknowledgement of the flexibility required for tangata whenua to determine their level of involvement. As for Section 3.2, Sections 3.6 and 3.19 provide a positive approach to giving effect to the principles of Te Tiriti o Waitangi.



16. NZPI has some concerns about the workload on iwi, hapū and whanau, councils and experts that will be required to take up the opportunities formally created by the NPS-IB, and the time required to do it properly. For example, if it is necessary for iwi, hapū and whānau to develop a specific framework for applying mātauranga Māori to indigenous biodiversity in their rohe, this will require time and resource. Ecological experts may also need to learn about or improve their understanding of mātauranga Māori. It is not clear if the timing provisions in Part 4 of the NPS-IB have adequately accounted for the time and resource required for genuine Māori participation in the system. This is a particularly important issue given the scale of reform currently underway and the intention to increase Māori participation in a range of processes.

Māori lands (Section 3.18)

17. Section 3.18 provides direction on the implementation of Policy 2 in relation to Māori land. The intention is that tangata whenua are enabled to exercise kaitiakitanga and manage indigenous biodiversity on their land, alongside the other outcomes sought for the land (some of which are listed in Clause 2). NZPI supports this policy intent. However, we are concerned that it is not appropriately articulated in the NPS-IB.
18. Section 3.18 attempts to enable the kaitiaki role by providing flexibility – biodiversity is to be maintained and restored ‘to the extent practicable’. We understand this is to allow the owners of Māori land to make decisions on the priorities of outcomes for their land. This may mean that the biodiversity outcomes set in the NPS need to be subservient to other outcomes for Māori land, if that is what Māori landowners determine. There is no clear statement anywhere in the NPS-IB that enabling kaitiakitanga means that different outcomes for biodiversity might be set on Māori land than set out in the NPS-IB. Without such a clear statement, we are concerned that the biodiversity outcomes will take precedence in decision-making for Māori land.
19. This point relates to others we have made in this submission about resolving conflicts. There is conflict inherent in the matters identified for consideration in Section 3.18. Rather than provide clear direction on resolving those conflicts, Section 3.18 just identifies all the matters to be considered. It would be more helpful for implementation if Section 3.18 clarified that tikanga and the exercise of kaitiakitanga may result in prioritisation of the matters listed, and that maintaining and restoring indigenous biodiversity may not be the top priority. Ideally, there would be policy support within the NPS-IB for this, and all the other exceptions and specific requirements in the NPS-IB.

PRECAUTIONARY APPROACH

20. Policy 3 requires “a precautionary approach is adopted when considering adverse effects on indigenous biodiversity”. This is a very high-level direction that provides no guidance for implementation. As drafted, it is likely to result in inconsistencies and uncertainty in implementation and may result in overly conservative decision-making.
21. There is no definition of ‘precautionary approach’. Section 3.7 of the NPS-IB provides some additional guidance on the situation in which the precautionary approach should be applied: when effects are uncertain, unknown or little understood, but potentially significant. NZPI’s



recommendation is that section 3.7 becomes the policy, as a replacement for the current Policy 3. Having the policy effectively split across two different locations in the NPS-IB is a barrier to good implementation.

22. Making this change to the policy would allow more implementation guidance to be provided in a new section 3.7. For example, the 'urban development information sheet' published alongside the NPS-IB states that the precautionary approach will apply 'in the meantime' to SNAs that have not yet been identified, and that the precautionary approach is not an avoidance provision. Neither of those two implications are evidenced from the NPS-IB as currently drafted. If the precautionary approach is intended to apply prior to SNAs being identified, then this intention should be incorporated into the policy or the implementation section. If the precautionary approach is not an avoidance provision, then the implementation section should explain how the precautionary approach can be applied without declining consents. For example, by using conditions of consent to stage activities, provide for reviews, and require monitoring. Direction on when declining consent would be an appropriately cautious approach would be helpful, such as when significant adverse effects on indigenous biodiversity in an SNA would be irreversible, or when offsetting and compensation are not possible or appropriate.
23. We also recommend that adaptive management is included in the NPS-IB as a means to apply the precautionary approach. Adaptive management is an emerging approach to managing uncertainty in planning, and perhaps has greater application in climate change contexts than indigenous biodiversity. However, adaptive management is a very helpful way to deal with uncertainty, and it provides a more concrete basis for what the precautionary approach could look like in practice.

CLIMATE CHANGE

24. Policy 4 is that indigenous biodiversity is resilient to the effects of climate change. This is worded as an objective, rather than a policy. Its scope is very broad and extends to factors beyond our control. As an outcome to be achieved, this would require a significant amount of policy direction and resource. However, if re-drafted as a means of achieving the NPS-IB objective, the scope of the policy would be clearer. For example, "The effects of climate change on activities to protect, maintain and restore indigenous biodiversity are taken into account". A policy such as this would ensure, for example, that changing rainfall patterns in an area are considered when selecting species to be used in a restoration project.
25. A key element missing from the policy on climate change is an acknowledgement of the role indigenous biodiversity has to play in climate change mitigation. A benefit of protecting, maintaining and restoring indigenous biodiversity is that it maintains and increases carbon absorption, contributing to our mitigation efforts. The NPS-IB should include explicit policy recognition of this benefit. For example, a new policy could direct that "The climate change mitigation benefits of protecting, maintaining and restoring indigenous biodiversity are recognised and promoted and opportunities within projects to maximise these benefits are pursued."
26. The implementation direction in Section 3.6 is confusing and is likely to raise more questions than it answers. Limb (a) is particularly problematic. We suggest that limb (a) is deleted and limb (c) relied on. We recommend this section is revised in light of the changes we recommend to Policy



4 and the additional policy we recommend, so that it provides practical direction on what local authorities are expected to do to give effect to the policies.

SIGNIFICANT NATURAL AREAS

Identifying SNAs (Policy 6, Sections 3.8 and 3.9, and Appendix 1)

27. NZPI supports the direction in Policy 6 to identify SNAs using a consistent approach. However, we have concerns that implementation of this policy direction may not actually result in consistency across the country, due to the disparity of resources across councils to be able to undertake the task within the 5-year timeframe.
28. We are concerned that the pool of ecologists, including specialist ecologists such as those who study bats and lizards, is small in New Zealand. There needs to be enough specialists not just for the Councils to go through the SNA identification process, but also to work with landowners and interested parties who wish to participate in the hearing process. This contest through the hearing process is important to ensure robust planning provisions.
29. There also needs to be enough specialists for the work to occur around the country at approximately the same time, given the 5-year timeframe in the NPS-IB. While some Councils have already gone through a process to identify SNAs and include them in plans, Clause (4) of Section 3.8 of the NPS-IB requires 'existing' SNAs to be assessed against the criteria in Appendix 1 within four years. This effectively means a very similar process for both existing and new SNAs within a very similar timeframe.
30. NZPI recommends that the requirement to assess existing SNAs against Appendix 1 is removed from the NPS-IB, in order to allow more resources to be available for the identification of new SNAs. The identification of new SNAs should take priority over the re-assessment of existing SNAs, given those existing SNAs will already be subject to some sort of protection under the current planning provisions. We note that Clause (3) of Section 3.9 requires a re-assessment of all SNAs at each 10-yearly plan review, and we consider this is sufficient timing for the review of existing SNAs.
31. We consider there should be a specific role for the Department of Conservation (DOC) in the identification of SNAs. Central government support is a key way to address the inequities between Councils and ensure the consistent identification of SNAs. As a minimum, DOC should be responsible for identifying SNAs on the conservation estate, rather than councils. National coordination of SNA identification would allow for the strategic organisation of the available ecological resource, so that ecologists could be used efficiently over the implementation time period.
32. Considering RM Reform, NZPI considers it is essential that the identification and management of SNAs, including the resolving of conflict between the location of development activities (including infrastructure) and the location of SNAs, is part of the spatial planning requirements for regional spatial strategies under the Spatial Planning Act.
33. NZPI supports the definition of SNA in Section 1.6 Interpretation incorporating those SNAs already identified in plans, regardless of how they are described. This is a pragmatic approach that ensures the work done to-date by Councils who have mapped SNAs is not lost, and does not need to be immediately redone as a result of the NPS-IB taking effect. However, we support the submission



point made by Te Uru Kahika (Regional and Unitary Councils Aotearoa), that transitional provisions are needed for current plan processes that manage SNAs, and indigenous biodiversity outside of SNAs, through means other than identifying and mapping them in a plan. These existing alternative ways to manage indigenous biodiversity, such as the One Plan process explained in the Te Uru Kahika submission, are valid and need to be incorporated within the NPS-IB.

Managing adverse effects on SNAs (Policy 7 and Sections 3.10 and 3.11)

34. Policy 7 includes two directions regarding SNAs – that SNAs are protecting by avoiding *and* managing adverse effects of new subdivision, use, and development. However, ‘avoid’ and ‘manage’ are either/or directions – you do not both avoid and manage an effect on an SNA. To improve clarity, the ‘and’ in the policy should be changed to an ‘or’. More importantly, there should be policy direction on when to avoid adverse effects and when to manage them. Without this, the policy provides very weak direction. This is the opportunity to provide policy support for the effects management hierarchy and the option of offsetting and compensation, as discussed above.
35. NZPI supports the detailed implementation direction in Sections 3.10 and 3.11, but we consider there is a significant gap between the weak policy direction and the detailed implementation direction. We recommend Policy 7 is split in two and made more directive by including some of the direction from section 3.10 within the policy, particularly the (a) to (e) list of effects to be avoided. A second policy (more than one may be needed) that sets out the direction for applying ‘manage’ rather than avoid should follow. There is almost no point to Policy 7, given the detailed implementation direction in section 3.10. Moving the key policy direction out of section 3.10 and into the policies will improve useability of the NPS-IB and make for more effective implementation.
36. Clause 3.11(2) provides an exception to the requirement to avoid the adverse effects on SNAs identified in Clause 3.10(2) and instead requires effects to be managed by applying the effects management hierarchy. NZPI supports the exceptions for specific infrastructure, mineral extraction, and aggregate extraction, but recommends a number of changes in relation to specific infrastructure.
37. Specific infrastructure includes lifeline utilities, which provide services that are essential to support urban communities. As discussed above, conflict between the objectives of the NPS-UD and indigenous biodiversity is inevitable and the NPS-IB should do more to direct how this conflict should be resolved. The exception for specific infrastructure in Clause 3.11(2) sets the bar too high and should be revised. NZPI recommends that the exception for specified infrastructure be provided without the accompanying tests of significant national or regional benefit, functional or operational need, and no practicable alternatives.
38. The significant national or regional benefit test is considered superfluous because this test is satisfied by an activity being defined as ‘specific infrastructure’. Specific infrastructure, by definition, provide regional or national benefit by providing lifeline services, because they are identified as regionally significant in a planning document, because they provide flood protection, and/or because they are a defence facility. There is no need to provide a further qualifying test of regional or national importance.
39. The requirement for a functional or operational need to locate in the location of an SNA, as well as the ‘no practicable alternative location’ test, can place an unreasonably high burden on some types of specific infrastructure. For example, a water treatment plant is unlikely to have a



functional or operational need to locate in or near an SNA, because the treated and untreated water can be transported by pipes to any location. However, the cost of this additional transportation, which may include the cost of pumps as well as pipes and needs to include maintenance over the life of the treatment plant (100 years), can be significant enough to make the project unviable. In this situation, the result of not being able to meet the functional or operational need test is that an area for urban intensification may not be able to intensify, in favour of protection of an SNA. NZPI is not convinced this is the right outcome in this case. In the case of specific infrastructure, if effects can be managed, offset or compensated under the effects management hierarchy, there should be no requirement for further tests to be applied.

RESTORATION

40. Policies 8, 13, 14 and 16, Sections 3.21, 3.22 and 3.23, and Appendix 5 address restoration of indigenous biodiversity.
41. The NPS-IB should provide stronger policy direction on the restoration of indigenous biodiversity outside of SNAs. Improvements to the condition of indigenous biodiversity outside of SNAs will bring significant benefits to wellbeing. Policy 8 is currently the only policy explicitly aimed at indigenous biodiversity outside of SNAs. Policy 13 (restoration) and Policy 14 (increased indigenous vegetation cover) should be amended so that they both explicitly apply to indigenous biodiversity outside SNAs. Adding the words “both inside and outside SNAs” or similar to the policies would achieve this purpose.
42. NZPI supports Policy 16 and the use of regional biodiversity strategies to promote restoration at a landscape scale. The policy direction on this could be stronger, and better integrated with Policy 13. There is significant overlap between Policies 13 and 16. In addition, Section 3.21 sets a direction for restoration that would be more appropriate in the policies than the implementation section. Section 3.21 states that “the purpose of a regional biodiversity strategy is to promote the landscape-scale restoration of the region’s indigenous biodiversity”. There should therefore be a clear policy direction to restore indigenous biodiversity at a landscape scale. We recommend Policy 13 and 16 are combined, to reduce the repetition between the two policies and clearly articulate that the strategies are a means of achieving the restoration goal.
43. We also consider a stronger link between regional biodiversity strategies and plan provisions should be included in the NPS-IB. Currently, Clause (2) of Section 3.23 requires councils to ‘have regard to’ these strategies when developing plan provisions on restoration. We recommend that this direction is changed to ‘give effect to’, which is stronger and provides more certainty that restoration outcomes in the strategies will be carried into the plan provisions. This is important so that the significant amount of work that will go into developing biodiversity strategies is leveraged in the development of plan provisions.
44. As well as stronger policy direction for restoration, greater implementation direction could be included in Sections 3.21 and 3.22. The direction to ‘promote’ can be difficult to achieve through plan provisions, and clarity on the expectations of what ‘promote’ entails in this context, particularly regarding plan provisions, will be of assistance to implementation. Examples, such as plan provisions that support and enable the creation of ‘restoration lots’ in subdivisions, would be helpful.



45. 'Promote' suggests actually taking action to encourage or facilitate positive outcomes. Currently, plan provisions cannot require actions to occur, unless and until an activity or development of some kind is proposed. Once an activity is proposed, plan provisions can require particular assessments and conditions of consent can be used to manage things such as offsetting. But this approach relies on development taking place as the trigger for considering restoration. While plan provisions can remove restrictions on restoration, and thereby make the path for restoration easier, plans cannot currently require restoration to occur. A plan will be able to identify and prioritise the matters listed in Clause (2) of Section 3.21 and Clause (4)(b) of Section 3.22, but will this be sufficient to meet the requirement to 'promote' restoration and increased vegetation cover in plans?
46. Non-statutory measures will be essential to achieve any goals associated with restoration, particularly a direction to 'promote'. NZPI supports Clause (3) of Section 3.21, which requires local authorities to consider providing incentives for restoration, in recognition of the opportunity cost to landowners of maintaining indigenous biodiversity. However, this will place a financial burden on councils. We consider that other non-statutory measures are also required. There should be more implementation direction in Section 3.21 requiring the consideration of other non-statutory measures.
47. NZPI supports the direction in Appendix 5 on regional biodiversity strategies. This appendix provides useful guidance on what needs to be included in a strategy, what might be covered, and what needs to be taken into account in developing a strategy. We consider this is the place for more guidance on non-statutory measures to promote restoration. The strategies are appropriate places for setting out comprehensive measures to promote restoration, of which plan provisions are just one part, especially with a requirement to 'give effect to' strategies when developing plan provisions for restoration.
48. Currently, Appendix 5 states that strategies must "record the actions and methods intended to promote the maintenance and restoration of indigenous biodiversity, and increase in indigenous vegetation cover, in the region". We recommend a new section is added to Appendix 5 that expands on this single statement. Non-statutory methods that should be discussed include:
 - Incentives for landowners
 - Accessible advice for landowners on restoration
 - Pest control
 - Increasing nursery capacity
 - Access to an appropriately skilled workforce for restoration activities
49. The requirement for biodiversity strategies to specify how monitoring will be undertaken could also be expanded on in Appendix 5. For example, there is significant potential for citizen science to play a role in monitoring restoration outcomes, and use of this methodology within strategies should be encouraged.
50. Considering upcoming RM Reform, NZPI considers it is essential that regional biodiversity strategies inform regional spatial strategies and NBA plans. These new strategies and plans will be one of the means by which the goals of the regional biodiversity strategies are achieved. The regional biodiversity strategies therefore need to have significant influence over the development



of the new documents. Otherwise, the work put into developing the regional biodiversity strategies will be wasted.

EXISTING ACTIVITIES

51. Policy 9 is a very ineffectual policy because it is so vague. It simply says “certain existing activities are provided for within and outside SNAs”. This immediately raises the questions ‘what activities?’ and ‘why?’. The policies in the NPS-IB should stand on their own and be understandable without reference to other parts of the NPS. The policies should also provide policy direction.
52. Section 3.15 provides very limited implementation direction for Policy 9. Section 3.15 effectively overrides section 20A of the RMA to provide an exception for existing activities equivalent to that provided by section 10 of the RMA, but for activities requiring regional council consents. This is made clear by the definition of ‘existing activity’ included in the NPS-IB, which excludes land uses covered by section 10 of the RMA. This is a departure from the ‘norm’ under the RMA, and comes with no specific policy support as to what type of activities the departure should apply to. Rather, regional councils have full discretion to identify the types of activities the exception will apply to.
53. NZPI supports the pragmatic approach intended by Policy 9 and section 3.15 of the NPS-IB. These provisions attempt to resolve conflicts between the continuation of existing activities and the protection of SNAs, in favour of existing activities. It means that, for example, existing farming operations that currently take place in SNAs, such as specific tussock grasslands, can continue without the need for a resource consent. However, stronger and more explicit policy direction would greatly help implementation. Especially because this approach effectively allows for maintenance of SNAs rather than the protection specified in the policies – it is an exception to the requirements of section 3.10 (although it is not addressed with the other exceptions in section 3.11).
54. As an example, Policy 9 could be reworded as follows (or similar) “*Existing activities within SNAs that contribute to the social, economic and cultural wellbeing of the district in which they take place are enabled to continue, and only new effects on SNAs from changes in the existing activity are managed in accordance with the direction in this NSP-IB.*”
55. We note that the wording and structure of the re-drafted Policy 9 above closely reflects the drafting of Policy 10. Consideration should be given to incorporating Policy 9 within Policy 10.
56. NZPI questions the need for limb (b) of sub-clause (2) of Section 3.15 and suggests it is deleted. The requirement in limb (a) is that “effects on any SNA (including cumulative effects) are no greater in intensity, scale, or character over time than at the commencement date.” This captures any change in effect on SNAs. It does therefore not seem necessary to also require “effects in any SNA do not result in the loss of extent or degradation of ecological integrity of the SNA”, as these changes would amount to greater intensity, scale and/or character of effect under limb (a). An alternative could be to include a policy direction for existing activities to ‘maintain’ indigenous biodiversity. ‘Maintain’ is a defined term in the NPS-IB focused on ‘at least no reduction’, which appeals to capture the intent of limb (b).
57. NZPI has some concerns over whether Section 3.15 will be applied consistently. Our members have widely varied experience with the application of section 10 by territorial authorities and see the same variation likely under Section 3.15. This is due to the high degree of discretion associated



with how to assess ‘no greater in intensity, scale, or character’. However, clarifying the policy intent of this provision and narrowing its scope, as recommended above, will help to manage these impacts.

58. We do have stronger concerns over the impact of this high degree of discretion on existing infrastructure. The maintenance and upgrade of infrastructure is essential to ensure it continues to provide for our health and wellbeing. It may also be necessary to meet other national priorities such as resilience to climate change, for urban growth, or to support rural communities. These upgrade and maintenance activities should not be unduly hindered, and should take priority over indigenous biodiversity. For example, clearance of regenerating vegetation under electricity transmission lines is a necessity. To provide for these activities, NZPI recommends that the maintenance and upgrade of existing specified infrastructure should be addressed through a separate clause under 3.15 that provides greater certainty that these activities can take place, than is provided for by the existing clause (2).

HIGHLY MOBILE FAUNA

59. NZPI supports the policy approach to managing areas that support specified highly mobile fauna. There is a clearly articulated goal in Policy 15 (maintain viable populations across their natural range), and clear implementation responsibilities identified in Section 3.20.
60. Useability of the NPS-IB would be improved by Policy 15 including a cross-reference to Appendix 2, which is where readers of the NPS will find the list of highly mobile fauna that the policy applies to.
61. This is a reasonably new aspect of planning for indigenous biodiversity. As such, NZPI recommends further guidance is provided on implementing this policy direction, either within section 3.20 or through accompanying guidance. In particular, guidance on the appropriate methodology for identifying areas that support the specified highly mobile fauna, as well as the type of plan provisions that might be needed to manage these areas, would be beneficial.

INFORMATION REQUIREMENTS

62. NZPI supports the NPS-IB setting out the information requirements for ecological reports in Section 3.24 and Appendix 1. This provides clarity and consistency. The requirement for these reports to be commensurate with the scale and significance of the proposal to indigenous biodiversity is pragmatic and helpful.
63. However, we have identified an issue with the requirement for ecological reports to identify effects on taonga species, and also to include mātauranga Māori and tikanga Māori assessment methodology. An ecologist may not be able to identify effects on taonga species that are not ecological effects. The requirement to apply mātauranga Māori and tikanga Māori “where relevant” does not provide very strong direction, and is misplaced in a section on ‘information requirements’. This section is identifying the contents of a report – the requirements for the actual assessment are elsewhere in the document (for example in Appendix 1 Criteria for identifying areas that qualify as SNAs). Section 3.24 should require the report to record the extent to which



mātauranga Māori and tikanga Māori assessment methodologies have been applied, rather than direct the manner of the assessment.

64. We recommend three amendments to the NPS-IB to address these two issues:
- Change Clause (2)(b) of Section 3.24 so that it is specific to ecological effects: “identify any ecological effects on identified taonga”.
 - Change Clause (2)(e) of Section 3.24 as follows: identify the extent to which include mātauranga Māori and tikanga Māori assessment methodology have been applied, where relevant.
 - Amend Appendix 1, Section 3 (Manner and form of assessment) so that it includes reference to mātauranga Māori and tikanga Māori methodologies.

TIMING

65. NZPI has significant concerns regarding the requirement in Clause 4.2 to notify plan changes for SNAs within five years of the commencement of the NPS-IB. This means that all the identification of SNAs has to occur in less than five years, to allow time to develop the planning provisions and complete a section 32 assessment, as well as seek political approval, in time for notification within five years. This is very tight, especially considering the resourcing issues discussed earlier in this submission.
66. NZPI recommends that the timing for introducing SNA provisions into plans is extended to 10 years, rather than five. This would allow more time to strategically manage the available ecological expertise and the use of that resource across the country. We consider that it is better to take the time to do this right, rather than to do it quickly and risk poor outcomes.
67. We support the suggestion in the LGNZ and Taituarā submission of staging the SNA process so that identification of SNAs is required within five years, and the inclusion of provisions within plans is required five years after this. NZPI is concerned about the effects of the NPS-IB requirements to make changes to RM planning documents at a time when the future of those RM planning documents is uncertain, due to the impending RM Reform. Planners are facing a high degree of uncertainty over the future requirements of the new system, and the place for existing work within that new system. There is a desire not to waste resources on work that might be required to change in the near future. While the process to identify an SNA should be the same regardless of the reform, the inclusion of provisions to protect those SNAs in planning documents will not. This will change in a currently unknown way. NZPI does not want to see effort being forced into developing plan provisions under the current system, which then have to be reconsidered and reworked under the new system. Within five years of commencement of the NPS-IB there will be certainty of the new plans and processes under the new system. It will be more efficient to work on planning provisions for inclusion in the new system, than put that work into the old system. Having a five year ‘hold’ on the development of plan provisions, while SNAs are identified and the reform is progressed, will provide much more certainty to practitioners than the current proposal.
68. A 10-year implementation would allow more time over which to spread the costs of implementation. These costs are potentially significant, especially for Councils that have not yet started the identification process. Councils with a low ratepayer base will have very limited access



to funding, and are also likely to be rural councils with large areas to assess for SNAs. This makes inconsistent implementation of the SNA identification requirements highly likely. Regional council support is likely to be helpful in this regard, but it will take time for regional councils to work out agreements with territorial authorities over funding and responsibilities, which will eat into the implementation timeframes.

69. In addition, NZPI recommends that the timeframes for implementation are linked to the funding and support measures identified in the final version of the Implementation Plan. As stated in the draft Implementation Plan, the success of the NPS-IB is contingent on its implementation. The timeframes for implementation of the NPS-IB are tight, and a failure to properly support implementation will result in failure of the NPS-IB itself.
70. There should be a mechanism in the NPS-IB that provides for more time for implementation if the funding and support measures in the Implementation Plan do not eventuate. This will provide certainty to Councils that they will be supported in implementation, and it will provide an incentive for ensuring the implementation support is delivered. This is particularly important for iwi, hapū and whānau engagement in the system. Time will be required for the funding identified to be applied and to make a difference to capacity for engagement. It is not clear that enough time has been factored into the timeframes set in Part 4 of the NPS-IB. Councils should not be encouraged to proceed with tasks before funded capacity building has been undertaken, by timeframes that penalise them if they wait for the capacity building to take place.
71. NZPI questions the focus in Clause 4.4(3) on changes to operative plans. This clause confirms that changes to operative plans to merely change wording or terminology for consistency with the NPS-IB can be made under clause 20A of Schedule 1 of the RMA as a minor amendment. This same clarification should be provided for proposed plans. Proposed plans represent the most up-to-date planning documents, and Councils will consider changing terminology in proposed plans for consistency with the NPS-IB. There will be many situations where proposed plans have more weight in the resource consent process than operative plans – in this situation it is more important to change the proposed plan than the operative plan. We recommend that Clause 4.4(3) is amended so that it also refers to proposed policy statements and plans and minor amendments under Clause 16 of Schedule 1 of the RMA.

OTHER SUBMISSION POINTS ON THE NPS-IB

72. *Section 1.6 Implementation:* NZPI supports the use of definitions from the National Planning Standards, particularly in relation to ‘functional need’ and ‘operational need’. Use of the National Planning Standard definitions ensuring consistency of interpretation and implementation of the NPS-IB, and alignment with related NPSs such as the NPS-Freshwater Management (NPS-FM).
73. *Section 1.6 Implementation:* The NPS-IB uses the term ‘specific infrastructure’ in a very similar way to the NPS-FM uses the term ‘specified infrastructure’. However, the subtle difference in the terms and definitions between the two NPSs has the potential to raise implementation issues. NZPI recommends that ‘specific infrastructure’ in the NPS-IB is changed to ‘specified infrastructure’, and that the definition is aligned between the NPS-IB and NPS-FM.



74. *Clause 3.17: Improved pasture:* NZPI notes that this clause is specific to ‘improved pasture’, and that the NPS-Freshwater Management has removed the term ‘improved pasture’ and instead used ‘pasture’. We recommended consistency between the two NPSs, to avoid interpretation issues. Consideration should be given to changing the reference to ‘improved pasture’ in Clause 3.17 to refer to just ‘pasture’.
75. *Policy 12 and Section 3.14: Plantation forestry:* NZPI recommends the policy direction in Policy 12 is strengthened. A direction to ‘manage’ indigenous biodiversity is very vague and provides no indication of what it is to be managed for. Further detail is provided in Section 3.14, and NZPI recommends this detail is lifted up into the policy, to strengthen and clarify the policy. A strengthened policy could be worded as follows (or similar): “SNAs within plantation forests are managed over the course of consecutive rotations of production in the manner necessary to maintain the long-term populations of any Threatened or At Risk species in the SNA.”

IMPLEMENTATION PLAN

76. NZPI supports the release of a draft Implementation Plan alongside the Exposure Draft of the NPS-IB. While it is a high-level document, it is encouraging to see a plan for staged implementation, and that there is real funding and support mechanisms to assist implementation. This provides a degree of certainty and is a positive tool for implementation.
77. The specific funding identified in the draft plan will go some way to addressing some of the concerns we have expressed earlier in this submission about implementation. However, we reiterate our earlier recommendation that timing for implementation should be tied to the rollout of the funding and support measures identified in the final Implementation Plan. Capacity building and funding add to the time required to implement the NPS-IB, and NZPI would rather see this time taken to ensure thorough and robust implementation, rather than rush implementation and end up with sub-standard outcomes.
78. NZPI supports the analysis in the submission of LGNZ and Taituarā on the funding requirements for implementation of the NPS-IB, which matches the concerns of our members. In summary, while \$19m has been set aside to support councils, tangata whenua and landowners, this amount will not go very far, with some individual councils estimated to need more than \$10m to implement the NPS-IB. We support the call for the Government to significantly increase this funding, and to specifically identify the funding to be allocated to tangata whenua.
79. NZPI recommends consideration is given to trialling implementation in one or two areas, and delaying implementation for other areas while the system is tested. This would allow for a number of critical aspects of the implementation system to be further developed and for the lessons learned to be applied to the rest of New Zealand, and would result in a better quality outcome overall. We consider it is worth taking the time to get this right. A trial would allow, for example, model SNA identification methodologies to be developed, and provide time to test capability enhancement programmes. Importantly, it would allow implementation costs and times to be better understood, so that more accurate levels of funding could be confirmed and assigned where needed.



80. We think the draft Implementation Plan would benefit from reference to the principles of Te Tiriti o Waitangi, and recommend adding a reference into the Objectives identified on page 8 of the draft plan, as follows:

Partner with tangata whenua – we work together with our Treaty partners and strive to give effect to the principles of te tiriti o Waitangi; implementation measures support the aspirations of iwi, hapū and whānau and help strengthen the role of tangata whenua in management of and decision-making for indigenous biodiversity.

ADDITIONAL IMPLEMENTATION SUPPORT

81. NZPI would like to see attention paid to the benefits of national-level technology assistance for implementing the NPS-IB. The task of identifying SNAs throughout the country and developing regional biodiversity strategies is significant. Technological tools will be a great assistance in these tasks and have the ability to help overcome the resourcing and timing issues we have identified in this submission.
82. The Implementation Plan accompanying the NPS-IB should specifically address technological tools to assist with implementation, and provide for national coordination to fund use of these tools and further develop them where required. This is a significant opportunity that needs to be pursued. A new objective should be included in the Implementation Plan relating to increased technological and digital assistance in managing indigenous biodiversity. Benefits could be realised across all aspects of the management system, including in data management, identification of areas of indigenous biodiversity, mapping of indigenous biodiversity, management of activities that affect indigenous biodiversity and restoration activities, as well as monitoring.
83. NZPI supports the pilot initiative identified in the Implementation Plan, to implement a digital platform that connects resources and users for better biodiversity outcomes. The draft plan states that this pilot will test if a centralised digital platform can support increased biodiversity action and whether such a platform would help improve access to support for landowners with an SNA. It will be tested in two regions. We see significant benefits in such a platform, particularly if it is also able to support development of the regional spatial strategies signalled under the new legislation.
84. Collating and understand the existing data on indigenous biodiversity is a critical first step in implementing the NPS-IB that appears to be missing from the Implementation Plan. We are not starting from scratch in this task, and we need to make the most of the work done to-date. A national collection or database of this information, with a digital strategy to manage and use it, would be hugely beneficial for effective and efficient implementation of the NPS-IB.
85. Implementation support also needs to focus on integration of the indigenous biodiversity initiatives with other national initiatives, such as those relating to freshwater, outstanding landscapes, climate change and natural hazards, and others. This implementation support needs to recognise that the biodiversity initiatives will be rolled at a similar times to other initiatives, by the same organisations tasked with rolling out the other initiatives, from similar funding streams, and within similar spatial extents to other initiatives. These acknowledgements are important to ensure a wholistic approach is applied to implementation.



SUMMARY OF RECOMMENDATIONS

86. In summary, NZPI makes the following recommendations for amendments to the Exposure Draft of the NPS-IB:
- a. NPZI recommends that ‘specific infrastructure’ in the NPS-IB is changed to ‘specified infrastructure’, and that the definition is aligned between the NPS-IB and NPS-FM.
 - b. The objective is amended to reflect the two-tiered approach to management of indigenous biodiversity.
 - c. Policy 1 is uplifted to become an objective.
 - d. Policy support is included for resolving conflicts within the NPS-IB, including for infrastructure and Māori land.
 - e. Section 3.7 on the precautionary approach replaces current Policy 3.
 - f. More detailed guidance on applying the precautionary approach is included in Section 3.7, including the use of adaptive management.
 - g. Policy 4 is redrafted as a means of achieving the NPS-IB objective, rather than as an objective itself. For example: *“The effects of climate change on activities to protect, maintain and restore indigenous biodiversity are taken into account”*
 - h. Include a new policy that explicitly recognises climate change mitigation benefits. For example: *“The climate change mitigation benefits of protecting, maintaining and restoring indigenous biodiversity are recognised and promoted and opportunities within projects to maximise these benefits are pursued.”*
 - i. Clause 1(a) of Section 3.6 is deleted and the whole of Section 3.6 is revised in light of the changes recommended in (g) and (h) above.
 - j. The requirement to assess existing SNAs against Appendix 1 is removed from Clause 4 of Section 3.8.
 - k. Identify a specific role for the Department of Conservation (DOC) in the identification of SNAs in Section 3.8. As a minimum, DOC should be responsible for identifying SNAs on the conservation estate, rather than councils.
 - l. Include transitional provisions are included for current plan processes that manage SNAs, and indigenous biodiversity outside of SNAs, through means other than identifying and mapping them in a plan.
 - m. Change the ‘and’ between ‘avoid’ and ‘manage’ in Policy 7 to an ‘or’.
 - n. Split Policy 7 in two so that there is separate policy direction for when to avoid and when to manage. Move the key policy direction out of Section 3.10 and into the policies, particularly the (a) to (e) list of effects to be avoided. Policy direction to ‘manage’ should include reference to the effects management hierarchy and the situation in which this



- should be applied.
- o. Amend Clause 3.11(2) so that the exception applies to specific infrastructure without the requirement to provide significant national or regional public benefit, and without the need to meet limbs (b) and (c).
 - p. Change the reference to 'improved pasture' in Clause 3.17 to refer to just 'pasture'.
 - q. Add the words "*both inside and outside SNAs*" or similar to Policy 13 and Policy 14.
 - r. Policy 13 and 16 are combined, to reduce the repetition between the two policies and clearly articulate that regional biodiversity strategies are a means of achieving the restoration goal.
 - s. In Section 3.23, Clause 2, replace 'have regard to' with 'give effect to'.
 - t. Add a new section to Appendix 5 that expands on non-statutory methods that should be considered to 'promote' restoration of indigenous biodiversity.
 - u. Include the use of citizen science methodologies for monitoring restoration outcomes in Appendix 5.
 - v. Provide more explicit policy direction for the continuation of existing activities in Policy 9, and/or consider combining Policy 9 and Policy 10. For example, a reworded Policy 9 could be as follows (or similar) "*Existing activities within SNAs that contribute to the social, economic and cultural wellbeing of the district in which they take place are enabled to continue, and only new effects on SNAs from changes in the existing activity are managed in accordance with the direction in this NSP-IB.*"
 - w. Delete limb (b) of sub-clause (2) of Section 3.15.
 - x. Maintenance and upgrade of existing specified infrastructure is addressed through a new clause in Section 3.15 that provides certainty that these activities can take place.
 - y. The detail provided in Section 3.14 is included Policy 12. For example: "*SNAs within plantation forests are managed over the course of consecutive rotations of production in the manner necessary to maintain the long-term populations of any Threatened or At Risk species in the SNA.*"
 - z. Include a cross-reference in Policy 15 to Appendix 2.
 - aa. Provide further guidance on implementing the highly mobile fauna direction, either within Section 3.20 or through accompanying guidance.
 - bb. Change Clause (2)(b) of Section 3.24 so that it is specific to ecological effects: "*identify any ecological effects on identified taonga*".
 - cc. Change Clause (2)(e) of Section 3.24 as follows: identify the extent to which include mātauranga Māori and tikanga Māori assessment methodology have been applied, where relevant.



- dd. Amend Appendix 1, Section 3 (Manner and form of assessment) so that it includes reference to mātauranga Māori and tikanga Māori methodologies.
- ee. Change Clause 4.2 so that identification of SNAs is required within five years of the commencement of the NPS-IB and the inclusion of provisions within plans is required five years after this (10 years total).
- ff. The timeframes for implementation in Part 4 of the NPS-IB be linked to the funding and support measures identified in the final version of the Implementation Plan.
- gg. Amend Clause 4.4(3) so it refers to proposed policy statements and plans and minor amendments under Clause 16 of Schedule 1 of the RMA.
- hh. The submission also makes a number of recommendations on the Implementation Plan and additional assistance that could be provided for implementation.

DAVID CURTIS

CEO

Te Kokiringa Taumata | New Zealand Planning Institute

P: +64 9 520 6277 ext. 3 | M: +64 21 625 244 | www.planning.org.nz