

28 July 2022

Ministry for the Environment
Wellington



To Whom it May Concern

Exposure Draft of the Draft National Policy Statement for Indigenous Biodiversity

This letter sets out feedback from Boffa Miskell Ltd (Boffa Miskell) on the **Exposure Draft of the Draft National Policy Statement for Indigenous Biodiversity** ('the exposure draft NPS-IB' or 'exposure draft'), released June 2022.

We acknowledge the effort that the Ministry for the Environment (MfE) has put into the exposure draft in response to feedback from submissions and hui during public consultation held in 2019 and 2020.

We understand that MfE is now seeking feedback on the exposure draft NPS-IB from practitioners, iwi, stakeholders and those highly familiar with the exposure draft NPS-IB (and previous drafts) to ensure its provisions are workable.

Our feedback is focused on the **clarity and workability** of the exposure draft NPS-IB and has been prepared with input from the practitioners within Boffa Miskell who are familiar with the provisions of the draft NPS-IB.

This feedback does not represent the views of any of our clients.

About Boffa Miskell

Boffa Miskell is a leading New Zealand environmental planning and design consultancy with offices in Whangārei, Tāmaki Makaurau Auckland, Tauranga, Kirikiriroa Hamilton, Te Whangai-a-Tara Wellington, Whakatū Nelson, Ōtautahi Christchurch, Tahuna Queenstown and Ōtepoti Dunedin. We bring planning, design and ecology together to enhance the value and sustainability of the natural, built and social environment. We work with a wide range of local and international private and public sector clients.

Amongst our team of experts, Boffa Miskell has over 200 ecologists, planners, cultural advisors, landscape architects, landscape planners, urban designers and biosecurity consultants who provide expert advice to a range of clients including all levels of government (national, regional and territorial councils), government organisations (the Department of Conservation, MfE etc.), energy companies, the quarrying industry and land developers. Our practitioners hold registrations in their specific

disciplines and represent their specialist expertise in decision-making forums such as hearings and the Environment Court. A number are also accredited decision-makers under MfE's Making Good Decisions programme.

Our practitioners are involved in field assessments of indigenous biodiversity, and in the interpretation of the application of national, regional, and territorial legislation, policy and regulations as well as helping shape Aotearoa's future environments. We have first-hand knowledge and experience of the management of indigenous biodiversity throughout New Zealand, as well as the implementation of the effects management hierarchy. We work with many guiding documents, scientific literature, planning frameworks, mentors, and our own experiences.

Feedback from Boffa Miskell

We begin this submission by noting our general concern with the resource implications of this National Policy Statement, which if not addressed in tandem with the directives flowing from this statutory document will compromise the ability to deliver on the objective to *“protect, maintain, and restore indigenous biodiversity”*.

We are concerned that the processes mandated by the NPS-IB will put councils under substantial pressure and reduce resources for essential management of indigenous biodiversity.

Arguably, the biggest gains for indigenous biodiversity protection and enhancement can be made outside of the regulatory sphere under the Resource Management Act (1991) (RMA) and we would encourage the NPS-IB to:

- a) acknowledge challenges relating to resourcing in the sequencing and timing of implementation of this policy;
- b) recognise the opportunities for gains that can be made by integration of biodiversity with urban growth and with agriculture, including the formulation of appropriate incentives;
- c) enable, promote and incentivise the active management of key threats to New Zealand's biodiversity including introduced animal pests, plant pests and pathogens;
- d) consider the use of incentives to better promote non-regulatory initiatives that result in protection and enhancement of indigenous biodiversity.

In summary, we would not like to see the resources required to fund implementation of the NPS-IB diverted away from the equally important measures underway to protect and enhance New Zealand's indigenous biodiversity.

Specific Comments

In the table on the following pages, we provide our responses and feedback to the specific consultation questions about the provisions in the exposure draft NPS-IB. We have not responded to all the consultation questions but have included all of these in the table for completeness.

Part 1: Preliminary provisions

1. Do you have any feedback on the workability of provision 1.3: Application?

Response:

Provision 1.3(1) of the exposure draft NPS-IB states that indigenous biodiversity in the coastal marine area (CMA) and aquatic indigenous biodiversity is not covered by the NPS-IB. However, provision 1.3(2)(c) may include natural wetlands, which occur in these areas¹ (NZHC 3113, 2021) and 1.3(2)(d) explicitly recognises that regional biodiversity strategies may extend into the CMA. This could cause confusion over the status of the CMA and the basis for provisions in these spaces.

Further, despite the provisions of the National Policy Statement for Freshwater Management (NPS-FM) to prohibit the loss of wetlands and the extent of rivers, and the objectives and policies in the New Zealand Coastal Policy Statement (NZCPS) to protect and maintain the coastal environment, we would be surprised if the intent of the exposure draft NPS-IB is to exclude these features and environments from being identified as, or included within, significant natural areas (SNAs).

Identification as an SNA (as per the criteria set out in Appendix 1 of the exposure draft NPS-IB) would mean the provisions of Subpart 2, that are notably absent from the NPS-FM, would apply to freshwater and coastal features. However, our reading of the exposure draft NPS-IB is that freshwater and coastal ecosystems are excluded from consideration as SNAs.

Furthermore, the NPS-FM and the NZCPS address indigenous biodiversity through a different lens, and the provisions therein do not consider some attributes widely canvassed for management in the exposure draft NPS-IB (such as fragmentation, mobile fauna). We consider that this is a significant gap and that there is a lack of integration of policy direction across the NPS-FM, NZCPS and the exposure draft NPS-IB.

We consider that this lack of integration may lead to confusion, difficulties in protection and management of indigenous biodiversity, and widely disparate re-interpretation of the policy intent.

Our opinion is that these three policy statements are not sufficiently integrated to adequately implement section 6(c) of the Resource Management Act that requires 'the protection of areas of significant vegetation and significant habitats of indigenous fauna' as a matter of national importance.

Amendment sought:

1. That the NPS-FM, the NZCPS and the exposure draft NPS-IB are aligned and integrated to minimise confusion and avoid any gaps in biodiversity protection and management.

¹ Minister of Conservation v Mangawhai Harbour Restoration Society Incorporated [2021] NZHC 3113, 18 November 2021

2. Do you have any feedback on the workability of provision 1.5: (2) Te Rito o te Harakeke?

Response:

Te Rito o te Harakeke is a fundamental concept that informs the framework of the exposure draft NPS-IB. It refers to 'maintain', 'interconnectedness', 'care for', 'stewards' and 'kaitiaki'. All of these are relatively subjective terms and open to interpretation and varying application.

With the exception of mātauranga Māori, none of the Māori terms used are defined in provision 1.6. We recommend including definitions of the following terms in provision 1.6: mauri, kaitiaki, whakapapa and Te Ao Māori.

The inherent approach to the exposure draft NPS-IB would benefit from greater interpretation of how the fundamental concept of Te Rito o te Harakeke has been applied to the draft policy. For example, nowhere in provision 1.5(2) is there reference to the identification and protection of SNAs, and yet that is the core approach for the protection and maintenance of indigenous biodiversity in the exposure draft NPS-IB. There is also a disconnect between the concept of Te Rito o te Harakeke and the objective to protect, maintain, and restore indigenous biodiversity. For example, the key concepts / approaches of protection and restoration are missing from this fundamental concept.

Amendment sought:

1. Include definitions for mauri, kaitiaki, whakapapa and Te Ao Māori in provision 1.6.
2. Add further clarity and explanation of the fundamental concept of Te Rito o te Harakeke.

3. Do you have any feedback on the workability of provision 1.5: (3) Maintenance of indigenous biodiversity?

Response:

As a fundamental concept, provision 1.5(3) is aspirational. While we support this concept and agree an aspirational concept is appropriate in relation to the objective of this national policy statement, we question whether provision 1.5(3) is realistic. Is at least no reduction in (a) the size of populations of indigenous species, or (b) indigenous species occupancy across their natural range achievable from the commencement date of the NPS-IB?, particularly given the ongoing impacts of key threats (for example, introduced animal and plant pests) on New Zealand's indigenous species.

Amendment sought:

1. Consider whether this fundamental concept is achievable.

4. Do you have any feedback on the workability of provision 1.5: (4) Effects management hierarchy?

Response:

We support the inclusion of the effects management hierarchy.

The language *'more than minor residual adverse effects'* is confusing and creates ambiguity. Case law has provided meaning to the terms *'more than minor'* and *'residual effect'*. We suggest slight amendments to clarify that it is the residual adverse effect that needs to be more than minor.

Amendment sought:

1. Amend provision 1.5(4)(d), as follows: *"where residual adverse effects that are more than minor cannot be demonstrably avoided, minimised, or remedied, biodiversity offsetting is provided where possible; and"*
2. Amend provision 1.5(4)(e), as follows: *"where biodiversity offsetting of residual adverse effects that are more than minor is not demonstrably possible, biodiversity compensation is provided; and"*

5. Do you have any feedback on the workability of provision 1.6: Interpretation?

Response:

As a general comment, we note that provision 1.6., and other the parts of the exposure draft NPS-IB such as fundamental concepts, use loosely defined terminology and ecological terms and concepts that are open to interpretation and / or are very broadly encompassing if strictly applied.

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

This definition of indigenous vegetation is very inclusive and lacks reference to the fact that "vegetation" should comprise a group or community of plants. As defined, it will likely result in perverse outcomes because, for example, more than two individual vascular or non-vascular plants (including of the same species) would technically meet this definition.

Ecological functions: *are the abiotic (physical) and biotic (ecological and biological) flows that are properties of an ecosystem*

'Ecological functions' is one example of an ecological term that is open to interpretation, and / or is very broadly encompassing if strictly applied. We have concerns about how disruption to ecological function can be measured or determined; for example, under provision 3.10(2)(b).

Existing activity: the definition provided in the exposure draft NPS-IB excludes land uses covered by section 10 of the RMA, which would suggest that existing use rights are not provided for.

Highly mobile fauna area: *"means an area outside an SNA that is identified under clause 3.20 as an area used by specified highly mobile fauna".*

The word 'used' in this definition is problematic because it is not clear what sort of 'use' by highly mobile fauna is intended. For this definition to be workable, either clarification of the word 'used' is required, or an alternative definition is required.

Species: the term *species* which is currently defined as "includes taxa" doesn't define what species are.

Restoration: the reference to 'indigenous natural character' needs to be clarified as it is not a commonly used term and it is unclear if this term is intended to be used as per its meaning under RMA, Section 6(a) where it applies only to wetlands, lakes, rivers and their margins. We also note that the exposure draft NPS-IB excludes aquatic indigenous habitats.

Specific infrastructure: for consistency this term should reflect the term used in the NPS-FM which is 'specified infrastructure'. Water storage infrastructure is proposed for inclusion in the NPS-FM definition. For consistency, water storage infrastructure should also be included in the exposure draft NPS-IB definition. Also, the definition in the exposure draft NPS-IB includes reference to the Defence Force, which the NPS-FM does not.

Tikanga Māori: it would be useful to define what 'tikanga Māori' means where it is used in the exposure draft NPS-IB. This would assist clarification and consistent implementation.

Amendments sought:

1. **Existing activity:** clarification is sought on whether existing use rights are being removed under the NPS-IB.
2. **Highly mobile fauna area:** Clarify the meaning of the word 'used' in this definition, for example "providing important habitat for feeding, breeding, moulting or roosting either seasonally or permanently". Alternatively, provide an alternative definition.
3. **Indigenous vegetation:** Amend the definition to clarify that vegetation must comprise a group or community of plants rather than individual plants.
4. **Specific infrastructure:** Amend the definition as follows:
Specific specified infrastructure means any of the following:
(a)....
(c) water storage infrastructure....
5. **Restoration:** clarify the meaning of the term 'indigenous natural character.'
6. **Tikanga Māori:** Provide a clear definition for 'tikanga Māori'.

Part 2: Objective and policies

6. Do you have any feedback on the workability of provision 2.1: Objective?

Response:

The objective, as drafted, does not reflect the intent of Te Rito o te Harakeke as it does not refer to the intrinsic value and mauri of indigenous biodiversity. In our opinion, it is very 'people' focussed and does not address the environment in its own right (i.e., independent of its use by people).

The objective of 2.1 will be difficult to achieve. For example, how will we know that indigenous biodiversity has been maintained in a way that recognises tangata whenua as kaitiaki. What will this look like? As worded in the exposure draft, it will be difficult to determine if an application is contrary or not to the objective.

Further, there is no direction on the ability to use indigenous biodiversity to benefit people now versus protection to benefit people in the future. This high-level language lacks direction or clarity in how it is to be achieved as a future based goal.

In our opinion, the objective needs to embody the six elements of Te Rito o te Harakeke and set the framework for the broader policies below. In this regard, we consider that it would be preferable for the matters listed in provision 3.2 to form the objective.

In addition, we suggest that it would be beneficial to set out priorities for protecting, maintaining and restoring indigenous biodiversity as this would provide clarity in terms of the intent of the NPS-IB and the outcomes being sought. This would also reflect the approach taken in the objective that applies in the NPS-FM.

Amendment sought:

1. We suggest that the objective should be reworded to reflect the approaches under Subpart 1 and of the NPS-FM.

7. Do you have any feedback on the workability of provision 2.2: Policies?

Response:

If the objective (provision 2.1) in the exposure draft NPS-IB is amended, the reference to people being stewards of indigenous biodiversity will be lost. This should be included as a policy in its own right as it is one of the six elements of Te Rito o te Harakeke. Further to this, it would also be useful to include some of the matters listed in provision 3.2 to form policies, as suggested above for the objective. Including some of the matters listed in provision 3.2 will add weight to these rather than them simply being listed as implementation matters.

Policy 2: We support Policy 2 but note that because of the wording of (a) "*enabling tangata whenua to manage indigenous biodiversity on their land*" this could be incorrectly interpreted as meaning that tangata whenua are limited to managing indigenous biodiversity on Māori land only.

Policy 4: The intent of the policy is supported but it is aspirational. In reality, how will this be measured and over what time period? The policy should be amended to reflect the intent of

provision 3.6, which is that local authorities must promote the resilience of indigenous biodiversity to climate change (also refer to comments on provision 3.6 below).

Policy 10: This policy is extremely broad and could arguably include a large range of activities from energy generation schemes to roads to quarries to houses to schools to industry. The simplistic statement implies that any activity contributing to well-being will be provided for. There is no linkage to how this may affect indigenous biodiversity values or how this may be managed through other processes. How will recognising and providing for activities that contribute to New Zealand's social, economic, cultural, and environmental well-being be considered against the need to recognise and provide for the maintenance of indigenous biodiversity outside SNAs? This links to Policy 14, and how increasing indigenous vegetation in urban areas sits alongside the direction for intensification in our towns and cities. There is the possibility for conflict within the policy framework (and between this NPS and other national direction e.g., the National Policy Statement-Urban Development) and as the exposure draft NPS-IB is written, it appears that each application that involves indigenous biodiversity will be considered on its merits.

Policy 16: What is meant by 'landscape scale'? The intent is presumably for regional biodiversity strategies to provide strategic direction to manage and restore indigenous biodiversity over large areas in a holistic approach. However, there are a number of ways to define a 'landscape' and as a result, the scale at which this policy is intended to operate is unclear. From a landscape architect's perspective, 'landscape' can be explained as a reflection of the relationship between people and place and can be defined spatially and the meaning people attach to place influences the way places are defined.

Policy 17: This policy is vague as it just refers to improved information. It should be amended to be more proactive and guiding in relation to what type of biodiversity related information needs to be improved.

Amendments sought:

1. New policy: Recognise people and communities as stewards of indigenous biodiversity.
2. New policy: The protection, maintenance, and restoration of indigenous biodiversity will require methods identified at a local level that adopt an integrated ki uta ki tai approach.
3. Amend Policy 2(a) to read: "enabling tangata whenua to manage indigenous biodiversity ~~on their land; and~~"
4. Amend Policy 4 to read: Promote the resilience of indigenous biodiversity ~~is resilient~~ to the effects of climate change.
5. Amend Policy 10 to read: Specified Aactivities that contribute to New Zealand's social, economic, cultural, and environmental well-being are recognised and provided for.
6. Policy 16: Clarify what is meant by the term 'landscape scale' or provide a definition for this term.
7. Amend Policy 17 to read: There is improved collation and sharing of information by councils on, and regular monitoring of indigenous biodiversity.

Subpart 1: Approaches to implementing this National Policy Statement

8. Do you have any feedback on the workability of provision 3.2: Te Rito o te Harakeke?

Response:

The wording of provision 3.2(1) is that “*Local authorities must engage with communities and tangata whenua...*”. Because this provision relates to Te Rito o te Harakeke, we recommend referring to tangata whenua before communities in this provision.

As drafted under provision 3.2, the onus is on all individual local authorities to instigate and implement a process to give effect to this provision. However, there is no guidance on how the provision is to be implemented in practice. In our opinion, this will require substantial input from tangata whenua (in addition to the many other processes they are being asked to contribute to). It would be beneficial to all parties for the NPS-IB to provide practical guidance on how this provision is to be achieved and the basic principles that should be applied in all areas. Beyond such guidance, some practical support in implementation and resourcing would improve the application of this process.

Amendment sought:

1. Amend provision 3.2(1) to read:
“Local authorities must engage with tangata whenua and communities to determine how to give effect to Te Rito o te Harakeke and its six essential elements in their regions and districts.”

9. Do you have any feedback on the workability of provision 3.3: Tangata whenua as kaitiaki?

Response:

Provision 3.3 will require substantial involvement and engagement with tangata whenua. This will require input from experienced cultural advisors, tangata whenua and local authorities. In our experience, currently there is a shortage of cultural advisors with the appropriate skills and experience to provide the input required.

Provision 3.3(1) only mentions management of indigenous biodiversity and does not use terminology such as protection or enhancement. This should be clarified to reflect the objective and the approach set out in provision 3.2 to ensure consistent implementation by local authorities.

For consistency, provision 3.3(2)(d) should reflect the terminology used in the NPS-FM and refer to mahinga kai, rather than customary use.

Amendment sought:

1. For consistency, align the terminology in provision 3.3(1) with the objective and provision 3.2.
2. For consistency, align the terminology in provision 3.3(2)(d) with the NPS-FM.

10. Do you have any feedback on the workability of provision 3.4: Integrated approach?

Response:

We agree an integrated approach to managing indigenous biodiversity outcomes is necessary through subdivision, use and development. We also consider that there are opportunities to restore and enhance indigenous biodiversity by integrating restoration with the design process for activities associated with subdivision, use and development.

Amendment sought:

1. Recognise that there are opportunities to restore and enhance indigenous biodiversity by integrating restoration with the design process for activities associated with subdivision, use and development.

11. Do you have any feedback on the workability of provision 3.5: Social, economic, and cultural wellbeing?

Response:

This is a useful provision that provides clarity that it is not anticipated that subdivision, use and development cannot occur, or will automatically be at odds with protection, maintenance and restoration outcomes. This recognition should be retained.

Amendment sought: None

12. Do you have any feedback on the workability of provision 3.6: Resilience to climate change?

Response:

This provision relies on local authorities having sufficient knowledge and understanding of likely climate change effects in relation to matters that are not certain. Will councils have sufficient knowledge to address this matter? In our opinion, it would also be useful if provision 3.6 contained a reference to national documentation / information to ensure all local authorities are using the same information to ensure a consistent approach is applied.

The reference to 'natural adjustments' in provision 3.6(1)(a) suggests that activities need to provide for ecosystems to move, expand or shift into other areas. Practically, this could require large areas to remain undeveloped or unused to enable the potential adjustment of an ecosystem. How will local authorities decide where and how much space to leave?

Provision 3.6(1)(b)(ii) introduces the concept of managing and reducing new and existing biosecurity risks. Whilst indigenous biodiversity not biosecurity are clearly linked, biosecurity is subject to its own strategies and plans and it is not the purpose of the NPS-IB to manage biosecurity risks.

The maintenance and enhancement of connectivity between existing ecosystems is supported as a sound ecological principal. However, the reference to 'potential habitats' introduces uncertainty.

The key will be in how this is implemented. Presumably, the identification of ‘potential habitats’ will be informed by ecological assessment?

Amendment sought:

1. Amend 3.6 to read:

3.6 Resilience to climate change

(1) Local authorities must promote the resilience of indigenous biodiversity to climate change, including at least by:

(a) providing for the maintenance of ecological integrity through natural adjustments of habitats and ecosystems; and

(b) considering the effects of climate change when making decisions on:

(i)—restoration proposals; and

(ii)—managing and reducing new and existing biosecurity risks; and

(c) maintaining and promoting the enhancement of the connectivity between ecosystems, and between existing and potential habitats (to be determined by a suitable qualified ecologist), to enable migrations so that species can continue to find viable niches as the climate changes.

13. Do you have any feedback on the workability of provision 3.7: Precautionary approach?

Response:

We support a precautionary approach where effects are potentially significantly adverse. However, we have concerns that knowledge of indigenous biodiversity, and therefore effects on indigenous biodiversity, is often, at least to some extent, uncertain, unknown, or little understood. Depending on how this is interpreted, this provision could preclude subdivision, use and development when it may be appropriate.

Amendment sought:

1. To reduce ambiguity, provide more clarity about when effects on indigenous biodiversity are too uncertain, unknown, or little understood.

Subpart 2: Significant natural areas

14. Do you have any feedback on the workability of provision 3.8: Assessing areas that qualify as significant natural areas?

Response:

Under provision 3.8(1):

“Every territorial authority must undertake a district-wide assessment of the land in its district to identify areas of significant indigenous vegetation or significant habitat of indigenous fauna that qualify as SNAs.”

Subpart 2: Significant Natural Areas is a core approach for protecting and maintaining indigenous biodiversity in the exposure draft NPS-IB. Provision 3.8(2) requires that:

“The assessment must be done using the assessment criteria in Appendix 1....”

Appendix 1, is therefore, a key part of the exposure draft NPS-IB. In accordance with Appendix 1, an area qualifies as a SNA if it meets any one of the 16 attributes of the four criteria, and some of these attributes have a low threshold for achieving significance. We also note that as currently drafted under Appendix 1, criteria C(6)(a) any areas that provide habitat for an indigenous species that is listed as Threatened or At Risk (Declining) in the New Zealand Threat Classification System lists, including all of the specified highly mobile fauna in Appendix 2 will qualify as an SNA. As a result, in our opinion as experienced ecological practitioners, extensive areas of New Zealand will likely be identified as SNAs.

There does not appear to be a pathway in provision 3.8 (or elsewhere) for territorial authorities to include SNAs in plans if they are identified and assessed by a suitably qualified ecologist on behalf of an applicant as part of a resource consent application process. Instead, if a territorial authority becomes aware (as a result of a resource consent application, notice of requirement or any other means) that an area may be an area of significant indigenous vegetation or significant habitat of indigenous fauna that qualifies as an SNA, the territorial authority must conduct its own assessment of the area. This may result in duplication of effort and may also lead to individual authorities inconsistently determining that their relevant rules and policies relating to significant areas either apply in the case of that resource consent application / notice of requirement (etc.), or do not.

Provision 3.8(2)(c) requires that *“wherever practicable, the values and extent of natural areas are verified by physical inspection”*. Because an area qualifies as a significant natural area if it meets any one of the 16 attributes of the four criteria in Appendix 1, in many cases, physical inspection to verify if an area qualifies as a significant natural area will not be required. However, undertaking a physical inspection will be necessary for most areas in order to provide the information in Appendix 1 (3)(1) that must be included in every assessment.

Amendment sought:

1. Clarify whether there is a pathway in provision 3.8 (or elsewhere) for territorial authorities to include SNAs in plans if they are identified and assessed by a suitably qualified ecologist on behalf of an applicant as part of a resource consent application process.

15. Do you have any feedback on the workability of provision 3.9: Identifying SNAs in district plans?

Response: None

Amendment sought: None

16. Do you have any feedback on the workability of provision 3.10: Managing adverse effects on SNAs of new subdivision, use, and development?

Response:

Provision 3.10 (2) requires that specific adverse effects on SNAs of any new subdivision, use, or development are avoided. In our view, it will be very difficult for new subdivision, use or development within SNAs to avoid the adverse effects listed in provision 3.10 (2) (a – e). In addition to this, provision 3.10 (2) (a – e) has no regard to the scale or severity of the effects listed. For example, provision 3.10 (2) requires that any new subdivision, use or development avoids “a reduction in the population size or occupancy of Threatened, At Risk (Declining) species that use an SNA for any part of their life cycle”. In practice, the loss of a single individual of a Threatened or At Risk (Declining) species means this adverse effect has not been avoided, and as a result, there will be no pathway for consenting that activity. Provision 3.10 (2) is unlikely to provide a pathway for many new activities within SNAs to access the effects management hierarchy and will likely result in perverse outcomes, both environmental and social / economic.

Further, provision 3.10 means that the effects management hierarchy is not available to an activity if effects cannot be avoided. This means that there is no ability to respond to a loss of a single individual plant through remediation, offsetting or compensation and thus that a proposal would not be able to be considered regardless of any potential for an overall net gain in indigenous biodiversity.

Provision 3.10(4)(a) requires an applicant to demonstrate how each step of the effects management hierarchy will be applied, which includes how these adverse effects have been avoided. In our opinion, because of the broad, loosely defined terminology used in this provision (only some of which are defined in provision 1.6) it will be difficult, and in some cases likely impossible, to demonstrate whether these adverse effects have been avoided. For example (2)(b) requires disruption to ecosystem function be avoided. ‘Ecosystem functions’ are defined as “*the abiotic (physical) and biotic (ecological and biological) flows that are properties of an ecosystem*”.

Amendment sought:

1. Provide guidance clarifying the scale / severity at which subdivision, use or development activities are considered to have avoided the adverse effects in provision 3.10 (2) (a – e).

17. Do you have any feedback on the workability of provision 3.11: Exceptions to clause 3.10?

Response:

Use of the term “*could not otherwise be achieved domestically*” is unusual and its meaning is unclear. We question whether the term ‘domestically’ in this context is intended to mean ‘locally’? By way of example, does this require that aggregate extraction must only be used for regionally significant purposes, and if it is used on a local scale, it is then not covered by the exemptions?

For consistency, provision 3.11(5)(c) should reflect the terminology used in the NPS-FM and refer to mahinga kai, rather than customary use.

Indigenous trees planted for commercial use may qualify as SNAs under the criteria in Appendix 1. Provision 3.14 would then apply to these areas of planted indigenous forest which may disincentive use native trees in place of exotic trees.

Amendment sought:

1. Clarify the wording: *“could not otherwise be achieved domestically”*
2. For consistency, align the terminology in provision 3.11(5)(c) with the NPS-FM.
3. Include indigenous plantation forestry as an exception to provision 3.10.

18. Do you have any feedback on the workability of provision 3.12: SNAs on Māori lands?

Response: None

Amendment sought: None

19. Do you have any feedback on the workability of provision 3.13: Geothermal SNAs?

Response: None

Amendment sought: None

20. Do you have any feedback on the workability of provision 3.14: Plantation forests with SNAs?

Response:

Under provision 3.14(1) SNAs within plantation forest must be managed to maintain the long-term populations of any Threatened and At Risk species in the SNA. This provision does not require effects to be managed by applying the effects management hierarchy, and provides no direction as to how populations of Threatened and At Risk species should be managed. In situations where populations of Threatened and At Risk species survive within the plantation forests, management of fauna, and particularly more mobile fauna, such as birds, over the course of consecutive rotations of production is likely to be more achievable through rotational harvesting. However, management of plants will be more problematic as likely to require either avoiding felling in locations where populations are present, or management actions such as translocation or propagation and re-planting. There is also no clarity provided in how this integrates with or overrides the provisions of the National Environmental Standards for Plantation Forestry.

In our opinion, the wording *“An SNA within a plantation forest”* does not provide sufficient clarity on the intent of provision 3.14. That is, is this provision intended to apply to areas of significant indigenous vegetation or significant habitat of indigenous fauna that occur within the plantation forest itself (i.e., fauna using exotic plantation forestry as habitat and / or indigenous vegetation growing in the understorey of plantation forestry), or to also apply to discrete areas of significant indigenous vegetation or significant habitat of indigenous fauna that are *surrounded* by plantation forest? If it is also intended to apply to the latter, then provision 3.14 does not provide the same

level of protection to SNAs *surrounded* by plantation forest as provision 3.10 provides to other SNAs.

Amendment sought:

1. Provide further direction as to how long-term populations of Threatened and At Risk species should be managed within SNAs within plantation forests.
2. Clarify whether this provision 3.14 is intended to apply to areas of significant indigenous vegetation or significant habitat of indigenous fauna that occur within the plantation forest itself, or whether it is also intended to apply to discrete areas of significant indigenous vegetation or significant habitat of indigenous fauna that are *surrounded* by plantation forest.

21. Do you have any feedback on the workability of provision 3.15: Existing activities affecting SNAs?

Response:

Provision 3.15(2)(a) provides for continuation of existing activities on the basis that their effects are no greater in intensity, scale, or character over time. However, 3.15(2)(b) applies a test that is unrelated to 3.15(2)(a) and may undermine the ability of existing activities to continue in their current form. This is because the existing activity may be causing ongoing degradation to the ecological integrity of an SNA. If the purpose of this clause is to enable continuation of existing activities in their current form, then clause 3.15(2)(b) needs to be amended to enable this.

Amendment sought:

1. Amend 3.15(2)(b) to read:

“do not result in the loss of extent of an SNA or greater degradation of the ecological integrity of the SNA than at the commencement date”

22. Do you have any feedback on the workability of provision 3.16: Maintaining indigenous biodiversity outside SNAs?

Response: None

Amendment sought: None

23. Do you have any feedback on the workability of provision 3.17: Maintenance of improved pasture?

Response:

Provision 3.17(2)(a) requires ‘adequate evidence’ to demonstrate that the maintenance of improved pasture is part of a regular cycle of periodic maintenance. In our opinion, more specific direction about what ‘adequate evidence’ is, is required in relation to this provision.

Provision 3.17(2)(c): *“the improved pasture has not itself become an SNA”*. While we acknowledge that inclusion of this sub-provision makes it very clear that provision 3.10 has precedence over provision 3.17, we question the need for its inclusion given that if an area of improved pasture has become an SNA, then it must be managed under provision 3.10 anyway? Depending on how a local authority decides to apply the identification of SNAs (e.g., desktop vs ground-truthed, which criteria dominate) then many areas of SNA could be identified within areas of improved pasture. This has the potential to severely impact the application of this provision. It could also lead to perverse outcomes such as a patchy effect of small SNAs scattered throughout improved pasture with consequential implications on the ability to manage land effectively.

Inclusion of provision 3.17(2)(d) will have substantial implications for rural land use, for example in the Mackenzie Basin where there are extensive areas of land that meet the definition of ‘depositional landform’ that have not been cultivated. Because the definition of ‘maintenance of improved pasture’ includes ‘applying seed of exotic pasture species’ this will prohibit over-sowing of extensive areas of land on depositional landforms that have previously been over-sown and top-dressed but not been cultivated through physical means such as ploughing or direct drilling.

The term ‘cultivated’ in provision 3.17(2)(d) needs to be defined in provision 1.6 (Interpretation). The word cultivation has a broad meaning in relation to agricultural activities and it is currently unclear what the word ‘cultivated’ includes. For example, does cultivation include direct drilling where the landform has not previously been ploughed?

Provision 3.17(2)(e) requires maintenance of improved pasture to not adversely affect Threatened or At Risk (Declining) species. Firstly, this sub-provision is redundant because if Threatened or At Risk (Declining) species are present within an area of improved pasture, then in accordance with the criteria in Appendix 1 the improved pasture is an SNA and is captured by provision 3.17(2)(c).

In our opinion, provision 3.17(2)(e) could also result in perverse outcomes because relative abundant and widespread Threatened or At Risk (Declining) species, including for example several species of grass skink, matagouri, kānuka and mānuka and highly mobile fauna such as New Zealand pipit, banded dotterel, black-billed gull and New Zealand pied oystercatcher often occur in improved pasture. Mobile fauna (for example New Zealand pipit) may only utilise improved pasture irregularly, but to determine whether or not these species will not be adversely affected by any activity to maintain improved pasture, an ecological survey would be required.

Of particular note is that under provision 3.11(5), provision 3.10 does not apply to adverse effects on an SNA if the SNA is solely because of the presence of a kānuka or mānuka species that is threatened exclusively on the basis of myrtle rust. However, this exclusion does not apply to the maintenance of improved pasture in provision 3.17(2)(e), but both kānuka and mānuka are frequently early successional species within improved pasture.

Amendment sought:

1. Provide more specific direction about what ‘adequate evidence’ means in relation to provision 3.17(2)(a).
2. Include a definition of the term ‘cultivated’ in provision 1.6.

3. Delete provision 3.17(2)(e). If provision 3.17(2)(e) is not deleted, exclude kānuka or mānuka species threatened exclusively on the basis of myrtle rust.
Subpart 3: Specific requirements
24. Do you have any feedback on the workability of provision 3.18: Māori lands?
Response: None
Amendment sought: None
25. Do you have any feedback on the workability of provision 3.19: Identified taonga?
<p>Response:</p> <p>Provision 3.19 (and other provisions in the exposure draft NPS-IB, for example provision 3.3) require substantial involvement by, and engagement with, tangata whenua. For example, provision 3.19(3)(a) will require input from cultural advisors and tangata whenua for territorial authorities to map the location and describe the values of taonga in their districts. This will require input from experienced cultural advisors, tangata whenua and local authorities. In our experience there is currently a shortage of cultural advisors with the appropriate expertise to provide input into implementing these provisions. It will be very important that tangata whenua are appropriately resourced in order to be able to deliver the level of input required.</p> <p>The intent of provision 3.19(5) is presumably to recognise that holistic or metaphysical values of indigenous biodiversity can be affected. In our opinion, mauri, as referred to in provision 3.19(5)(a), is not the only possible value to be affected. We consider removing the subclauses and amending the provision will better capture the intent and provide better clarity.</p>
<p>Amendment sought:</p> <p>1. Amend 3.19(5) to read:</p> <p><i>(b) “In managing effects on identified taonga, local authorities must recognise that possible adverse effects on identified taonga can include metaphysical values, as identified by tangata whenua, in recognition of the historical, cultural and spiritual relationship between tangata whenua and taonga.”</i></p>
26. Do you have any feedback on the workability of provision 3.20: Specified highly mobile fauna?
<p>Response:</p> <p>Provision 3.20 (1) requires regional councils to record areas outside SNAs that are highly mobile fauna areas, with 3.20 (2) leaving it open to regional councils to map and describe each highly mobile fauna area on a per species basis “if it will help manage” the specified highly mobile fauna. We note that when considering the workability of provision 3.20, currently, the availability of sufficient data and information on populations of the specified highly mobile fauna is very limited</p>

for most of the species listed. In addition, it is likely to take a considerable length of time, perhaps many years, to truly understand the viability of the populations of these species sufficient to inform the policy direction to manage effects on these species.

Furthermore, based on the list of specified highly mobile fauna in Appendix 2, we would expect that large areas of most regions would be habitat for at least one of the species listed (ranging from transient use for temporary feeding and roosting, to more sensitive behaviours including seasonal feeding and breeding). Areas mapped for individual species are likely to cover the same mapped areas as other species (i.e., overlap and sit on top of each other in many cases).

Species such as New Zealand pied oystercatcher, New Zealand pipit, and falcon utilise a wide range of habitats, which often includes exotic habitats such as farmland and plantation forests. Many residential gardens and plantings within the CBD in Wellington City would also be highly mobile fauna areas based on the movements of a number of Threatened and At Risk species (falcon, red-crowned parakeet, North Island kaka). On this basis, regional councils may quite reasonably map extensive areas within their regions as highly mobile fauna areas, making the purpose of this exercise under 3.20 (1) largely redundant.

Further, as currently defined, highly mobile fauna areas would also include areas that do not contain indigenous vegetation, or any vegetation. We have frequently observed highly mobile fauna using:

- Buildings (including large industrial buildings) for roosting and nesting. For example, 20% of the global population of wrybill use the roof of the Main Freight Building in Otahuhu to roost on each high tidal cycle;
- Wharfs / jetties and piles: red-billed, black-billed gulls and white-fronted terns frequently use these structures for roosting, and will also use them for nesting;
- School grounds and sports grounds: At Pauatahanua red-billed and black-billed gulls use these areas as high tide roosts;
- Airport runways: Auckland Airport's airfield provides breeding habitat for northern New Zealand dotterel and New Zealand bittern feed in their stormwater ponds. Christchurch International Airport's airfield provides breeding habitat for banded dotterel breeding.
- Vacant lots / building sites: In Christchurch, black billed gulls breed have breed in a vacant lots within the CBD.

We also note that regional councils do not typically 'manage' fauna in a direct 'species management' sense, potentially also making 3.20 (2) less relevant.

Amendment sought:

1. Amend the definition of highly mobile fauna areas (refer to our earlier response in Question 5 (above) in relation to the definition of highly mobile fauna areas).

27. Do you have any feedback on the workability of provision 3.21: Restoration?
<p>Response:</p> <p>We also see opportunity for restoration to be promoted and incentivised outside of areas prioritised for restoration in 3.21(2) including in association with subdivision, use and development.</p>
<p>Amendment sought: None</p>
28. Do you have any feedback on the workability of provision 3.22: Increasing indigenous vegetation cover?
<p>Response:</p> <p>Provision 3.22(3)(a) and (b) require regional councils to:</p> <p style="padding-left: 40px;">(a) <i>“set a target of at least 10% indigenous vegetation cover for any urban or non-urban environment that has less than 10% cover of indigenous vegetation; and</i></p> <p style="padding-left: 40px;">(b) <i>consider setting targets of higher than 10% for other areas, to increase their percentage of indigenous vegetation cover”</i></p> <p>While 3.22(1)(a) implies the assessment of the percentage of indigenous vegetation cover in urban environments is to be undertaken for each urban environment, it is unclear as to the scale at which these targets should be set in non-urban environments. For example, are targets to be set at the scale of the ecological district, territorial authority or some other, as yet undetermined, landscape scale? As currently worded, this provision is likely to result in inconsistent approaches by regional councils to setting indigenous vegetation targets.</p>
<p>Amendment sought:</p> <ol style="list-style-type: none"> 1. Provide clear direction on the scale at which the targets in provision 3.22(3)(a-c) are to apply.
29. Do you have any feedback on the workability of provision 3.23: Regional biodiversity strategies?
<p>Response: None</p>
<p>Amendment sought: None</p>
30. Do you have any feedback on the workability of provision 3.24: Information requirements?
<p>Response:</p> <p>Under provision 3.24(1)(a) reports must be prepared by a <i>“qualified and experienced ecologist”</i>. This wording does not require that ecologist to have qualifications or experience that are relevant to the indigenous biodiversity matter(s) to which the resource consent application relates. This provision should be amended to <i>“suitably qualified and experienced ecologist”</i>.</p>

Under provision 3.24(2)(a) reports must include a description of the adverse effects of the proposal on indigenous biodiversity and how those effects will be managed using the effects management hierarchy. As well as describing these things, a report should also include:

- a description the proposal as it is relevant to indigenous biodiversity; and
- a description of the existing environment as it is relevant to the potential adverse effects of the proposal on indigenous biodiversity,

Provision 3.24(2)(a) requires the report to be prepared by the ecologist. However, this provision also requires in clause (b) that the report must identify or include information that ecologists typically do not have the qualifications, experience or expertise to provide. Specifically, these are:

- (b) identify any effects on identified taonga
- (c) identify the ecosystem services associated with indigenous biodiversity at the site
- (e) include mātauranga Māori and tikanga Māori assessment methodology, where relevant

We note in relation to Provision 3.24(2)(c) 'ecosystem services' the EIANZ Ecological Impact Assessment Guidelines (Roper Lindsay et al. 2018) state that ecosystem services provided by species, habitats or ecosystems are considered to be societal values, and require specialist advice since the topic is still not well understood in New Zealand.

Provision 3.24(2)(b) and (e) will require input from cultural advisors and/or tangata whenua who have the expertise to provide that input. As we have previously identified elsewhere, the implementation of the NPS-IB will require substantial involvement of, and engagement with, tangata whenua. In our experience there is currently a shortage of cultural advisors with the appropriate expertise to provide the level of input required. It will be very important that tangata whenua are appropriately resourced in order to be able to deliver the level of input required.

In our opinion, the requirement for reports to be prepared by an ecologist **and** to identify or include the above information will be unworkable because in most cases reports will require additional specialist advice from a suitably qualified cultural advisor and an ecosystem services expert. It is unclear whether a suitably qualified cultural advisor would also need to be a (suitably) *qualified and experienced ecologist* in order to have input into a report.

Amendment sought:

1. Amend "*qualified and experienced ecologist*" to "suitably *qualified and experienced ecologist*".
2. Amend provision 3.24(2) so that provision 3.24(2)(b, c and e) do not require a report that must be prepared by a qualified and experienced ecologist (in most cases this information would need to be provided by other technical experts).

31. Do you have any feedback on the workability of provision 3.25: Monitoring by regional councils?

Response: None

Amendment sought: None
Part 4: Timing
32. Do you have any feedback on the workability of the provisions under Part 4: Timing?
<p>Response:</p> <p>The requirements of clause 4.2 mean that all regions within New Zealand will need to have been fully assessed to identify SNAs (following the principles listed in provision 3.8(2)) in a maximum of 5 years. This will require the input of a range of experienced technical specialists (e.g., ecologists, cultural advisors, resource management planners). In our experience, these professions are currently at capacity. We do not consider that it will be possible to publicly notify all necessary policy statements or plans or changes nationally in order to give effect to subpart 2 of Part 3 (Significant Natural Areas) and clause 3.24 (Information requirements) within 5 years after the commencement date.</p>
<p>Amendment sought:</p> <ol style="list-style-type: none"> 1. We suggest MfE carefully considers whether the resources are available to implement clause 4.2 within the timeframe proposed in the exposure draft NPS-IB.
Appendices
33. Do you have any feedback on the workability of provision A: Representativeness criterion?
<p>Response:</p> <p>This criterion directs the assessor to consider commonplace indigenous vegetation and habitats, and may also include degraded indigenous vegetation, ecosystems and habitats that are typical of what remains, not of a pre-1840 (pre-European) state, or a reference state (i.e., the best of what remains).</p> <p>This leads the assessment to find features typical of the present-day environment, which reflects the levels of modification and young nature of many ecosystems, as representative. That is, they are typical of themselves, they are their own reference. This is a considerable lowering of the threshold for significance as modified assemblages are representative of the typical modified state – i.e. the criteria will be met most of the time.</p> <p>This is also true of significant indigenous fauna habitat. To be significant, it only needs to support the typical suite of indigenous animals that would occur in the present-day environment.</p> <p>In our opinion, an assessment criterion for representative should not pick up all indigenous features because of a perspective that modification and absence of unmodified systems means the threshold for significance can be substantively lowered. We consider the representativeness criteria require consideration of factors such as: expected species, structural composition, ecological functioning, and the presence of most guilds expected in that habitat type. These</p>

criteria still recognise modified sites, but by adjusting thresholds where all examples of a type are strongly modified – i.e. the reference is the best of the remaining.

Further, to meet 6(b) of this criterion, habitat only needs to retain “*at least a moderate range of species expected for that habitat type in the ecological district*”. We consider this to be a similarly low threshold for significance compared to other ecological significance criteria that (in relation to diversity and pattern) typically refer to “a high diversity of indigenous ecosystem or habitat types, or indigenous taxa”.

Amendment sought:

1. Amend A(6) to include reference to factors such as: expected species, structural composition, ecological functioning, and the presence of most guilds expected in that habitat type.
2. Amend A(6)(b) as follows to remove reference to “at least a moderate range of species”:
“(b) habitat that supports a typical suite of indigenous fauna that is characteristic of the habitat type in the ecological district and retains ~~at least a moderate~~ the expected range of species ~~expected~~ for that habitat type in the ecological district.”

34. Do you have any feedback on the workability of provision B: Diversity and pattern criterion?

Response:

Under B(5)(a) an area qualifies as an SNA if it has “*at least a moderate diversity of indigenous species, vegetation, habitats of indigenous fauna or communities in the context of the ecological district*”. As discussed above in relation to the representativeness criterion, in our opinion, this threshold is too low.

The diversity of indigenous species, vegetation, habitats of indigenous fauna or communities should be compared with similar habitats within the ecological district, not just in the context of the ecological district, because diversity differs markedly between different habitats. For example, indigenous sand dune vegetation has relatively low natural species diversity compared with indigenous broadleaved forest vegetation.

B(4) uses the wording “rate more highly under this criterion”. However, whether something rates highly or not is not relevant to the criteria in Appendix 1 because for an area to qualify as an SNA under this criterion it only needs to meet one of the attributes (i.e. it is a binary criterion met / not met assessment).

To qualify as an SNA under B(5)(b) only requires the “presence” of an ecotone, and / or of a complete or partial gradient, and / or of a sequence. The presence of any of these is sufficient to make an area significant.

An ecotone (which is not defined in provision 1.6) is the boundary or transitional zone between adjacent communities or biomes² – the space where habitats, communities and ecosystems blend

² Dictionary of Ecology, evolution and systematic, Lincoln, Boxshall & Cark eds, second edition 1998. Cambridge University Press

as they change. Such zones are technically present in every feature and between every different indigenous habitat – forest to shrub, shrub to grassland, herbfield to sedgeland, water to reedland etc. As it stands, therefore, the wording of B(5)(b) could, technically, be met in most, if not all, cases where indigenous vegetation occurs.

‘Complete’ or ‘partial’ gradients are not defined in provision 1.6. The word ‘gradient’ means an increase or decrease in the magnitude of a property. An ecological gradient typically means transition in abundance or condition of an abiotic factor such as: pH, nutrient, conductivity (saltiness), air pressure, temperature, humidity, concentration of a soil mineral etc. which results in a change/ing plant and animal assemblage to a recognisable new community.

Gradients lead to the development of sequences (which are defined in the provision 1.6 as “*a series of ecosystems or communities, often physically connected, that replace one another through space*”) and ecotones lie between each community in a sequence. Commonly referenced sequences are altitudinal (along a gradient of temperature) and hydrological sequences (along a gradient of moisture).

All indigenous communities will contain gradients, sequences and ecotones. The simple presence of these should not, in and of themselves, be sufficient to trigger significance. Rather, the presence of a number of sequences (formed by gradients and separated by ecotones) would indicate a more complex and diverse area of higher ecological value. This is not how the exposure draft NPS-IB criterion reads or can be interpreted to work. The simple presence of any of these features, whether complete or partial, is sufficient to confer significance, which means almost all indigenous features will be significant.

Amendment sought:

1. Amend B(5)(a) to read:

“at least a moderate diversity of indigenous species, indigenous vegetation, habitats of indigenous fauna or communities that contain a high diversity of indigenous ecosystem types or indigenous taxa in the context of similar habitats within the ecological district”

2. Amend B(5)(b) to read:

“~~presence~~-existence of indigenous ecotones, ecological gradients or sequences reflecting a high diversity of natural features”

35. Do you have any feedback on the workability of provision C: Rarity and distinctiveness criterion?

Response:

Provision C(1) refers broadly to the “*presence of rare or distinctive indigenous taxa*” which, as we have identified elsewhere in this submission, in this exposure draft also includes highly mobile fauna. We do not believe this is the intent of this provision, and suggest this wording, and in particular the word “*presence*” is re-considered.

Provision C(6)(a) means an area would qualify as an SNA if it provided habitat for an indigenous species that is listed as At Risk (Declining) (noting that this has been amended from At Risk to At

Risk (Declining) following consultation on the Draft NPS-IB). However, we note that there are workability issues with the inclusion of At Risk (Declining) species. Specifically, these relate to species such as matagouri (*Discaria toumatou*) and grass skinks (*Oligosoma aff. polychroma* Clade 3 – 5) that have very large populations and low to high ongoing or predicted decline. Some of these species are very widespread and present in locations that will result in perverse outcomes (for example, we frequently record grass skinks in areas of rank exotic grass and residential gardens in urban areas). To be clear, we do not seek to have At Risk (Declining) species removed from provision C(6)(a), as in our opinion, in most cases inclusion of At Risk (Declining) species is warranted. However, we do want to highlight the workability of this issue. Further consideration should be given to the implications of identifying areas as SNAs where these widespread and abundant species are present.

Provision C(5) states that “*Distinctiveness includes distribution limits, type localities, local endemism, relict distributions, and special ecological or scientific features.*” However, “*local endemism*” is not included as an attribute of rarity and distinctiveness in provision C(6). To avoid confusion, either remove reference to local endemism in provision C(5), or include it as an attribute of rarity and distinctiveness in provision C(6). If endemism is included in provision C(6), ensure the scale at which endemism is to be assessed at is clear (e.g. endemic to an ecological district, region).

Provision C(6)(c) refers to “an indigenous species or plant community at or near its natural distributional limit”. The word “near” is open to interpretation. We recommend providing guidance on when an indigenous species or plant community meets the threshold for significance under this attribute.

An area would qualify as an SNA under provisions C(6)(f) and (h) if it was the type locality of an indigenous species or a special ecological or scientific feature was present. In our opinion, neither of these attributes has any foundation as an attribute in an ecological significance criterion. The presence of ‘a special ecological or scientific feature’ should not make an area ecologically significant. Similarly, a type locality is a place where a species was first encountered by a scientist and collected as the reference specimen. This attribute has cultural/scientific value, but does not have ecological value. This attribute might be included as one aspect of a “special scientific feature” but has no basis for ecological significance in itself.

Amendment sought:

1. Re-consider and replace, or provide clearer guidance on the meaning of the word ‘presence’ in provision C(1).
2. We suggest further consideration is given to the implications of identifying areas as SNAs where widespread and abundant At Risk (Declining) species are present.
3. Either remove reference to local endemism in provision C(5), or include it as an attribute of rarity and distinctiveness in provision C(6). If endemism is included in provision C(6), ensure the scale at which endemism is to be assessed at is clear (e.g. endemic to an ecological district, region).
4. We recommend providing guidance on when an indigenous species or plant community meets the threshold for significance by being “at or near its natural distributional limit”.

5. Delete provisions C(6)(f) and (h) as they do not have any foundation as an attribute in an ecological significance criterion.

36. Do you have any feedback on the workability of provision D: Ecological context criterion?

Response:

Under provision D(3)(a) an area would qualify as an SNA if it was “*at least moderate size and a compact shape, in the context of the relevant ecological district*”. There is no guidance on what a “moderate size” or “compact shape” are, and neither is defined. It is also unclear whether this assessment should be made relative to a type of ecosystem or an absolute value.

Under provision D(3)(a) an area would also qualify as an SNA if it was “well-buffered”. This means that an area that is well-buffered would be significant even if it was not otherwise significant under any other attributes. Currently, there is no reference to the ecological value or significance of the ecosystem being buffered.

Amendment sought:

1. Provide guidance in the key assessment principles to clarify what threshold an area needs to meet to be significant under “moderate size” and “compact shape” and whether the assessment of this provision should be made relative to a type of ecosystem or an absolute value.

37. Are there any species which should or shouldn't be on the specified highly mobile fauna list?

Response:

There is no rationale provided for what constitutes a specified highly mobile fauna species so we do not know the decision making process for including (or excluding) species on the list in Appendix 2. However, there are a number bird species that are not included on the list that in our opinion should be, and others that shouldn't. Examples of species that in our opinion should be included are long-tailed cuckoo, red-crowned parakeet and black shag. Examples of species that are arguably not highly mobile are fernbird species and rock wren. We also note that seabirds are not included on the list in Appendix 2. Seabirds do traverse terrestrial environments, including areas outside of the terrestrial coastal environment, and can be adversely affected by new subdivision, use, and development, for example wind farm development and installation of artificial lighting. There are also a wide range of highly mobile invertebrates in New Zealand, but no invertebrates are specified in the list.

We note that Appendix 2 is a list of highly mobile fauna, however, only Threatened and At Risk species are included. Many indigenous bird species are highly mobile. Why are only Threatened and At Risk species specified?

The threat category provided for the species listed in Appendix 2 is now out-of-date. Threat classifications of indigenous species are reviewed at approximately three year intervals. Unless the threat category of the species in this list is updated following each revision of each species group, the threat category information will not be accurate.

In our opinion, there are two options to resolve the issues identified above:

1. Delete Appendix 2 and provide a clear definition for highly mobile fauna. This has the benefit that the list of species will not become outdated and gives regional council's some discretion and the ability to respond.
2. Retain Appendix 2 and revise the list to provide a more complete list of highly mobile fauna and update the threat categories (noting that threat categories of indigenous species are reviewed at approximately three year intervals and will need to be updated whenever they are reviewed).

Amendment sought:

1. Remove Appendix 2 and provide a clear definition for highly mobile fauna that can be applied by region.

38. Do you have any feedback on the workability of Appendix 3: Principles for biodiversity offsetting?

Response:

The introductory text in Appendix 3 specifies that *"The following sets out a framework of principles for the use of biodiversity offsets."* However, the following sentence says that *"These principles represent a standard for biodiversity offsetting and must be complied with for an action to qualify as a biodiversity offset"*.

Because the principles must be complied with, they are criteria, rather than a *"framework of principles"*.

We consider that complying with all of the principles is a high bar to achieve, and whilst we acknowledge the need to address each of the principles, it is likely that there will be occasions where not all principles can be met. It would be preferable to envisage a 'weight of evidence' approach that meets the acceptability of the biodiversity offset.

Principle 2 reflects a standard of acceptability for demonstrating and then achieving a net gain in biodiversity values. We support this intention but consider that the standards (a) to (c) of the principle, which include undefined concepts such as irreplaceability, vulnerability, and acceptable timeframes, are likely to result in uncertainty and protracted debate.

Further, we consider it likely that there will often be situations where under standard 2(b) *"effects on indigenous biodiversity are uncertain, unknown, or little understood"*. Examples of this situation the potential adverse effects of bird and bat strike with wind farms. This could principle, as currently worded, could potentially remove the consenting pathway for large specified or significant infrastructure projects.

Principle 3 requires a 'like-for-like quantitative loss / gain calculation' to demonstrate net gain. In our experience the requirement for a 'like-for-like quantitative loss/ gain calculation' to demonstrate net gain is not feasible in our view, as quantitative measurement of many components of biodiversity is not straightforward or even feasible with available methods, while attempting to do so would frequently require intensive data collection and analysis over long

timeframes. Moreover, our experience of loss / gain calculations in New Zealand is that the models in use do not have a transparent method to translate quantitative data into universal “currency” which can be used to calculate net gain. Therefore, their application has often relied on subjective estimates and untested assumptions. We are concerned that this approach will amplify the conclusion that offsets are not achievable, when in fact there may be a simple solution that is acceptable to all parties involved and that provides for the biodiversity benefits sought.

Lastly, we note that under the effects management hierarchy, where biodiversity offsetting is not demonstrably possible, biodiversity compensation must be provided. However, the framework of principles for the use of biodiversity compensation are very similar to those for biodiversity offsetting. This means that if an action does not qualify as a biodiversity offset, it is unlikely to qualify as biodiversity compensation, and if biodiversity compensation is not appropriate, the activity itself must be avoided.

Amendment sought:

1. Either remove the words “comply with” in the introductory text in Appendix 3, or re-word it to read:
“The following sets out ~~a framework of principles~~ criteria for the use of biodiversity offsets. These ~~principles~~ criteria represent a standard for biodiversity offsetting and must be complied with for an action to qualify as a biodiversity offset.”
2. Revise the wording of principle 2 (b) and (c) to allow for a ‘weight of evidence’ approach that meets the acceptability of the biodiversity offset.

39. Do you have any feedback on the workability of Appendix 4: Principles for biodiversity compensation?

Response:

The introductory text in Appendix 4 specifies that *“The following sets out a framework of principles for the use of biodiversity compensation.”* However, the following sentence says that *“These principles represent a standard for biodiversity compensation and must be complied with for an action to qualify as biodiversity compensation”*.

Because the principles must be complied with, they are criteria, rather than a *“framework of principles”*.

We consider that complying with all of the principles is a high bar to achieve, and whilst we acknowledge the need to address each of the principles, it is likely that there will be occasions where not all principles can be met. As for Appendix 3, in our opinion, it would be preferable to envisage a ‘weight of evidence’ approach that meets the acceptability of the biodiversity compensation.

Principle 2 reflects a standard of acceptability for demonstrating and then achieving a net gain in biodiversity values. We support this intention but consider that the standards (a) to (c) of the principle, which include undefined concepts such as irreplaceability, vulnerability, and acceptable timeframes, are likely to result in uncertainty and protracted debate.

Amendment sought:

1. Either remove the words “comply with” in the introductory text in Appendix 3, or re-word it to read:

“The following sets out ~~a framework of principles~~ criteria for the use of biodiversity compensation. These ~~principles~~ criteria represent a standard for biodiversity compensation and must be complied with for an action to qualify as biodiversity compensation.”

40. Do you have any feedback on the workability of Appendix 5: Regional biodiversity strategies?

Response:

As per comments provided in relation to policy 16, it is unclear what is intended by ‘landscape-scale’ where this term is used in Appendix 5. Is this intended to be regional or catchment based, ecological districts or some other large scale construct?

Amendment sought:

1. Clarify the meaning of ‘landscape-scale’ where this term is used in Appendix 5.

Provide further feedback

Any general feedback on the consultation

Response:

We are supportive of the policy direction and specific provisions that recognise the key role that tangata whenua have as kaitiaki of indigenous biodiversity. However, implementation of the NPS-IB will require substantial involvement and engagement with tangata whenua. In our experience there is currently a shortage of cultural advisors with the appropriate expertise to provide input into implementing these provisions. We would like to emphasise that it will be critical for tangata whenua to be appropriately resourced in order to be able to deliver the level of input required under the exposure draft NPS-IB.

Specific responses not able to be provided under the specific consultation questions above:

The four criteria for identifying significant indigenous vegetation or significant habitats of indigenous fauna are typically set-out in the following order: representativeness, rarity and distinctiveness, diversity and pattern and ecological context rather than the order they are set-out in Appendix 1(1)(1).

Appendix 1(2)(b) states that the context for an assessment of an area, in the context of the rarity assessment only, is its land environment. This is not correct and contradicts Appendix 1(C) which refers to assessing rarity at a number of scales including the ecological district, region or land environment (as well as the national scale for nationally listed Threatened and At Risk species).

Amendment sought:

1. Change the order in Appendix 1 to representativeness, rarity and distinctiveness, diversity and pattern and ecological context.
2. Amend Appendix 1(2) to:
 - (1) The context for an assessment of an area is:
 - (a) its ecological district, unless otherwise specified
 - ~~(b) in the context of the rarity assessment only, its land environment.~~

Concluding Comments

Boffa Miskell is grateful for the opportunity to provide feedback on the exposure draft NPS-IB given the importance of this policy statement for the protection and management of indigenous biodiversity throughout New Zealand.

We would be happy to participate in any further workshops or advisory groups to further develop the NPS-IB and any future guidance documents.

Yours sincerely



Kerry Gupwell
Chief Executive
Boffa Miskell Ltd