

**Local Government
New Zealand**
te pūtahi matakōkiri

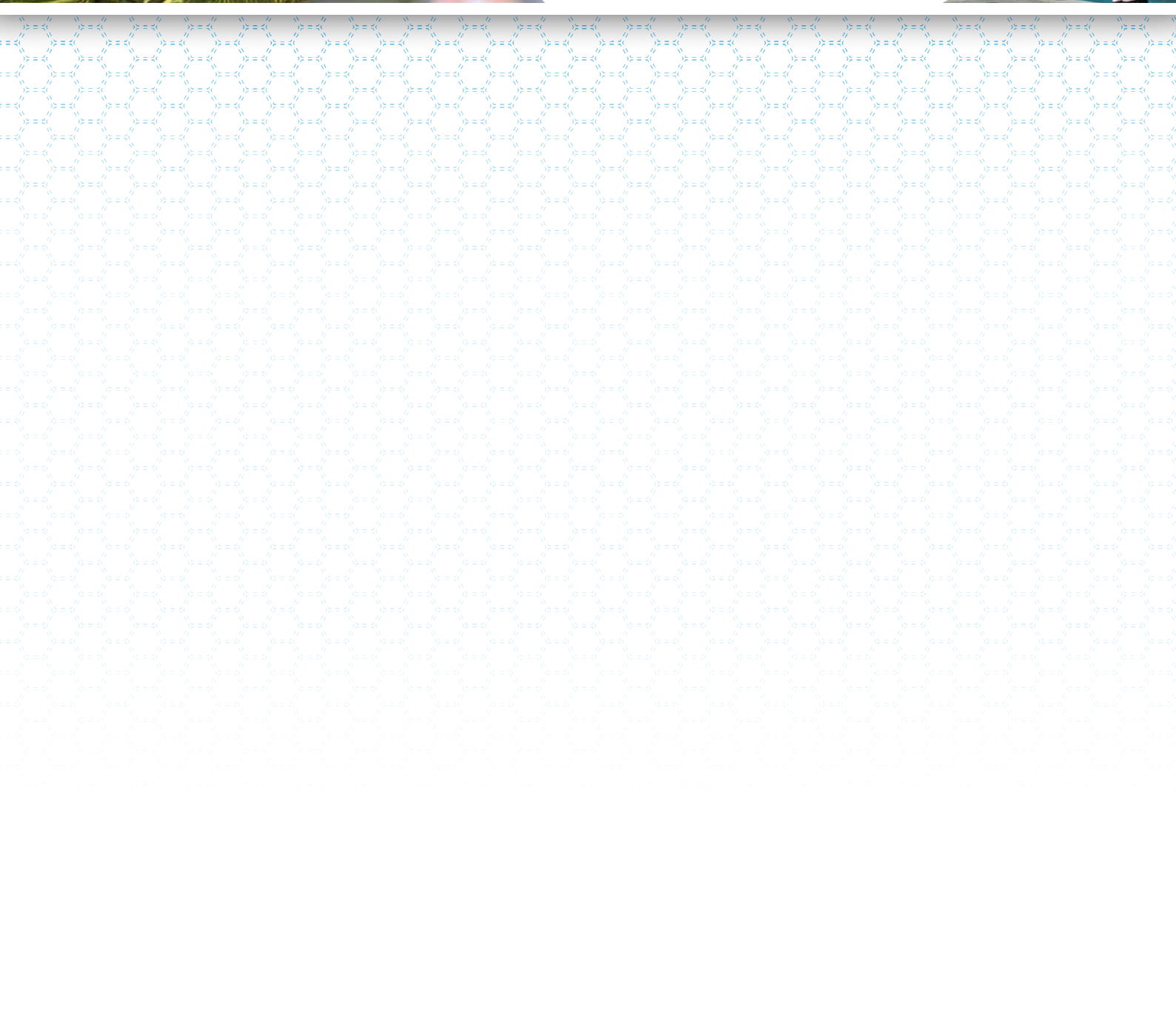


TABLE OF CONTENTS

INTRODUCTION	2
LOCAL GOVERNMENT NEW ZEALAND POLICY PRINCIPLES	2
COMMENTS	3
General Comments	3
Detailed comment on interpretation, objectives and policies	4
Part 3: Interpretation	4
Part 6 Objective	5
Part 7 Policies	5
<i>Policy 1</i>	5
<i>Policy 2 & 3</i>	5
<i>Policy 4</i>	6
<i>Policy 5</i>	7
<i>Policy 6</i>	7
Policy 7 & 8.....	8
CONCLUSION	8
RECOMMENDATIONS	9

INTRODUCTION

1. *Local Government New Zealand* (LGNZ) thanks Ministry for Environment (MfE) for the opportunity to make this submission in relation to the Proposed National Policy Statement (NPS) on Indigenous Biodiversity.
2. LGNZ makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

In addition, some councils will also choose to make individual submissions. The LGNZ submission in no way derogates from these individual submissions.

3. LGNZ prepared this submission following:
 - an analysis of the Proposed NPS on Indigenous Biodiversity
 - analysis of all feedback from councils
 - analysis of all feedback from LGNZ's technical advisory group.
4. This final submission was endorsed under delegated authority by:
 - Lawrence Yule, President, National Council
 - Fran Wilde, Environment spokesperson, National Council
 - Eugene Bowen, Chief Executive, LGNZ.
5. LGNZ would be pleased to meet with MfE for further discussion on any points raised in this submission.
6. LGNZ requests the opportunity to review a draft NPS for Indigenous Biodiversity before it is finalised.

LOCAL GOVERNMENT NEW ZEALAND POLICY PRINCIPLES

7. In developing a view on the provisions in the Proposed NPS on Indigenous Biodiversity we have drawn on the following high level principles that have been endorsed by the National Council of LGNZ. We would like the MfE to take these into account when reading this submission.
 - **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.
 - **Accountability to local communities:** councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities.
 - **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and

create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.

- **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by Government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.
- **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.
- **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

COMMENTS

General Comments

8. Local authorities are generally supportive of the Proposed NPS on Indigenous Biodiversity. The obligation to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna can be challenging for local authorities. It is clear however, that where there is disagreement, the existence of a NPS to underpin local authority decisions not only results in better outcomes, but also avoids the potential for expensive and unproductive litigation. While national policy can support local authority decision making, care must be taken that this does not come at the expense of non-regulatory activities and the goodwill of landowners.
9. The distribution of remaining indigenous vegetation and habitat of indigenous fauna does not fall uniformly across all districts and regions, and the cost of protecting a site is often local while the benefits may be local, regional and national. This should be formally acknowledged and consideration given to how to support local authorities and communities who bear an unequal share of the protecting New Zealand's biodiversity.
10. Local authorities are also concerned about the potential for "scope creep" and the implications this could have for implementation at the local level. For example, Policy 2 requires local authorities "*to consider the effects of any matter on significant indigenous vegetation or significant habitat of indigenous fauna*". The policy is further defined in Policy 2(e) to encompass "*habitats of threatened and at risk species*". The definition of habitat in the proposed NPS is "*the area or environment where an organism or ecological community lives or occurs naturally for some or all of its life cycle or as part of its seasonal feeding or breeding pattern*". While we acknowledge that Policy 2(e) reflects priorities as set out in "*Protecting Our Places: National priorities for protecting rare and threatened native biodiversity on private land*" (MfE, 2007) this seems to go beyond what could reasonably be expected of local authorities where there is neither the expertise nor the resources to identify habitats of threatened and at risk species.

11. Further clarification on the scope of the proposed NPS is required with regards to freshwater biodiversity. It is not explicitly excluded, and is implicit to the extent that the areas within Policy 2 include and impact upon elements of freshwater biodiversity.
12. Both the NPS and the New Zealand Coastal Policy Statement (NZCPS) apply to the coastal environment. It appears to be the view of the MfE that a NPS cannot provide direction that one section 6 matter is more important than another. Objective 1 NZCPS seeks to sustain coastal ecosystems by "*protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna*". The NPS on Indigenous Biodiversity seeks to protect areas of "*significant indigenous vegetation and significant habitats of indigenous fauna*". Undoubtedly clarity on the relationship of the NPS and the NZCPS will be forthcoming in the Environment Court at the expense of local authorities and the communities they represent. This is not acceptable. It is important that national policy statements and national environmental standards are consistent in approach and do not result in perverse or conflicting requirements on local government.
13. We note the use of Section 46(a) of the Resource Management Act (RMA) and the opportunity this provides to streamline the national policy process. Local authorities play a key role in the protection of biodiversity. A number of matters raised in this submission are fundamental to achieving positive biodiversity outcomes. We reiterate the request in paragraph 6 to review and discuss the NPS for Indigenous Biodiversity before it is finalised.

Detailed comment on interpretation, objectives and policies

Part 3: Interpretation

14. The definition of habitat in the proposed NPS is "*the area or environment where an organism or ecological community lives or occurs naturally for some or all of its life cycle or as part of its seasonal feeding or breeding pattern*". This is very broad. It is not unknown, for example, for grey teal and scaup to be living in local authority wastewater treatment ponds. Furthermore, Policy 6(c) promotes the retention of existing vegetation, whether indigenous or not, that provides habitat for indigenous species.
15. Some local authorities have also expressed concern about the definition of indigenous vegetation. It is overly complex and lacks clarity. This raises concerns that the definition encompasses indigenous vegetation that has been planted for amenity or utility purposes, eg shelterbelts, hedgerows, driveway plantings etc, regenerating vegetation, or where indigenous vegetation has been planted outside its natural range. The definition should be rewritten, ensuring agreement with amendments the definition of habitat.

Decision sought:

16. Broadening the definition of habitat beyond that in the National Priorities is creates an unreasonable expectation of local authorities. Amend the definition of habitat to reflect the definition in "*Protecting Our Places: National priorities for protecting rare and threatened native biodiversity on private land*" (MfE, 2007) i.e. "*The place or type of area in which a living thing naturally occurs*".

17. Amend the definition of indigenous vegetation.

Part 6 Objective

18. Local authorities generally support the objective to protect areas of significant indigenous biodiversity. We acknowledge that New Zealand has international obligations for the protection of biodiversity. The role local authorities play in the protection of biodiversity should however be formally acknowledged and consideration given to how to support local authorities who bear an unequal share of the protecting New Zealand's biodiversity. The Biodiversity Advice and Condition Fund are managed by the Department of Conservation (DoC) to enhance management of indigenous biodiversity outside public conservation lands. As a minimum, consideration should be given to making the Advice Fund available to local authorities for the identification of sites of significance.

Part 7 Policies

Policy 1

19. Policy 1 seeks to acknowledge that the protection of areas of significant indigenous vegetation or significant habitat of indigenous fauna is recognised as important for the maintenance of indigenous biological diversity. According to the explanation document this is to ensure that the proposed NPS does not cut across other measures of significance that councils might have under section 6(c) of the RMA. As written however, Policy 1 is more a definition than policy and should be reworded.

Decision sought

20. Amend Policy 1 to reflect the objective of the NPS.

Policy 2 & 3

21. We note that Policy 2 should be considered in conjunction with Policy 3 which requires regional policy statements (notified after the NPS) to include criteria for the identification of areas of significant vegetation and significant habitat of indigenous fauna with Policy 2(a)-(d) as a minimum. In their current form however Policies 2(a) and (d) are very broad. We understand these are supposed to reflect the national priorities for example National Priority 1: To protect indigenous vegetation associated with land environments, (defined by Land Environments New Zealand at Level IV), that have 20 percent or less remaining in indigenous cover. Policy 2 should be rewritten to be consistent with the National Priorities.
22. Local authorities note and support the specific exclusion of the habitats of threatened and at risk species from Policy 3. This will enable application on a case by case basis where information on these habitats is available.
23. Policy 3 should however be amended to allow for instances where a local authority has agreed to take responsibility for criteria to identify significant indigenous vegetation and significant habitat of indigenous fauna as Horizons Regional Council has. The criteria are within a regional plan (the Proposed One Plan) however not a regional policy statement.
24. In the absence of the detail on the work Landcare Research is undertaking to identify naturally uncommon ecosystems, the inclusion of Schedule One (Policy 2(a)) has been unhelpful. Local authorities assume the results of this research will provide the definitive list and locations of the naturally uncommon ecosystems.

Decision sought

25. Amend Policy 2 to mirror the national priorities 1, 2 and 3.
26. Retain the exclusion of habitats of threatened and at risk species from Policy 3.
27. Amend Policy 3 to provide for instances where criteria to identify significant indigenous vegetation and significant habitat of indigenous fauna are developed outside of a regional policy statement process e.g Horizons POP.

Policy 4

28. Policy 4 appears to require district plans and relevant regional plans, to identify areas of significant indigenous vegetation and significant habitats of indigenous fauna using "*(where practical) maps and/or schedules*", within five years of the NPS taking effect. Our understanding is that while this is not the intention the policy needs to be more clearly written.
29. There is sufficient ambiguity in the way the policy is written to question whether the directions in the policy apply to the criteria to identify significant indigenous vegetation and significant habitats, or the maps and schedules. Careful reading of this policy is required to determine that in fact the application of the five year time frame applies to criteria to identify significant areas beyond those captured in Policy 2(a) – (d).
30. We note the application of this policy (2(e)) is limited to where there is existing information for habitats of threatened and at risk species. This acknowledges the cost of ecological surveys to determine the presence of these species. Local Authorities are strongly supportive of the provision to limit identification of these areas to where there is existing information on the habitats of threatened and at risk species.
31. Acknowledging the inclusion of "*where practical*", and the limited application for habitats of threatened and at risk species, implementation of Policy 4 raises a number of questions with regards to mapping and the potential for unintended outcomes. Clearly there will be financial implications for local authorities as the identification of sites for inclusion in plans is an extremely time and resource hungry exercise.
32. Local authorities recognise the importance of having accurate information and knowledge on biodiversity if they are to effectively meet their RMA responsibilities. However they also recognise that providing absolute certainty by ground truthing possible sites of significance can be an expensive and time-consuming exercise. There can also be more practical limitations such as landowners denying access to private land. Some local authorities suggest that consideration be given to the inclusion of a precautionary approach policy that contains direction or guidance that will apply in the context of limited available information or where there is scientific / factual uncertainty eg indigenous vegetation clearance rules, which would trigger an assessment of the values of sites on a case by case basis.
33. Also, there is some unease with this provision where local authorities have already undertaken mapping of remnant indigenous cover, the Marlborough District Council for example. Often the mapping is

undertaken on the understanding with landowners that this information will not be publicly available. This undertaking can contribute to the maintenance or protection of the biodiversity values at that site. Policy 4, arguably, precludes the option of working with landowners where there is good will as landowners are effectively required to have mapping undertaken.

Decision sought

34. Amend policy 4 to ensure clarity of policy requirements.
35. Retain the application of Policy 4 to the criteria of Policy 2(a) – (d).
36. Retain the application of the five year time frame in Policy 4 to inclusion of the criteria in RPS.

Policy 5

37. We acknowledge the clarity provided in Policy 5 in establishing a hierarchy of decision making to manage the effects of activities on biodiversity of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
38. Local authorities are concerned about the effectiveness of biodiversity offsetting policy however, given the lack of documented success, both nationally and internationally. To meet the purpose and principles of the RMA, and the objective of the proposed NPS, the procedural application of biodiversity offsets needs to be extremely rigorous, guided by defensible principles, and applied in a highly transparent manner.
39. The NPS does not adequately define the geographical extent of "*no net loss*". Schedule 2 (5) Landscape context states that the offset design will demonstrate that "*it contributes to and complements biodiversity conservation priorities/goals at the landscape and national level*". Given the distribution of remaining indigenous vegetation and habitat of indigenous fauna does not fall uniformly across all districts and regions however does this mean that an off-set could be established in another district or region assuming it meets other assessment criteria such as "*like-for-like-or-better*".
40. We are aware that DoC leads cross departmental research investigation into biodiversity off-setting in New Zealand due for completion in 2012. This research covers ecological measurement and comparison of impact and offset sites; establishment of an appropriate offset currency; and development of effective implementation techniques and would presumably form the basis of a useful guide to local authorities. It is fundamental however, that the core principles of offsetting are explicitly stated within the policy in order to provide clear guidance as to their application.

Decision sought:

41. Provide guidance for Policy 5 that includes the core principles of offsetting and clear guidance on application.

Policy 6

42. We note the focus of Policy 6 is on promoting the maintenance of biodiversity outside areas of significant indigenous vegetation and

significant habitats of indigenous fauna to support the biodiversity resilience. Application of this policy will enable local authorities to reflect community aspirations where they exceed the requirements of the NPS as set out in Policy 2, including where community aspirations include threatened species.

43. Given the value of pest management in maintaining biodiversity and the role regional councils play in plant and animal pest control, this should warrant more attention than apparent in 6(e). The current wording is complicated and mixes several management methods (planting, pest control, creation of habitat) with best practice (eco-sourcing). The components captured by 6e should be addressed in their own right.

Decision sought

44. Amend Policy 6(e) to separate pest management in acknowledgement of the role pest management plays in biodiversity protection.

Policy 7 & 8

45. Policy 7 and Policy 8 appear to state what is regarded as good practice for the development and implementation of local policies and plans. However some local authorities have concerns about Policy 7(d). This calls for regional policy statements and district plans to provide for '*customary use of indigenous biodiversity according to tikanga*'. There has been some confusion on what might be required of local authorities to implement this policy. Will local authorities be tasked with resolving access issues between local iwi and landowners for example?
46. Policy 8 re-states expectations for consultation already apparent in the RMA, but reinforces the need to consult early in the process ie prior to notification of plans. Given the requirement in Policy 4 to (where practical) map or use schedules, to identify areas of significant indigenous vegetation and significant habitats of indigenous fauna it seems a given that there will be early dialogue with landowners.

Decision sought

47. Amend Policy 7 (d) to ensure clarity of policy requirements.
48. Delete Policy 8.

CONCLUSION

49. LGNZ thanks the MfE for the opportunity to comment on the Proposed NPS for Indigenous Biodiversity.
50. In an environment of increasing demands, including the demand to reduce cost, the obligation to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna can be challenging for local authorities.
51. This should be acknowledged with support provided to local authorities, particularly where the burden for protection of remaining biodiversity is coupled with limited resources. While national policy will undoubtedly support local authority decision making, care must be taken that this does not come at the expense of non-regulatory activities and existing goodwill of landowners.

RECOMMENDATIONS

52. LGNZ makes the following recommendations:

- The distribution of remaining indigenous vegetation and habitat of indigenous fauna does not fall uniformly across all districts and regions. Funding should be considered to support the protection and enhancement of biodiversity.
- Further clarification on the scope of the proposed NPS is required with regards to freshwater biodiversity.
- Both the NPS and the NZCPS apply to the coastal environment. It is important that national policy statements and national environmental standards are consistent in approach and do not result in conflicting requirements on local authorities. Clarity on the relationship of the NPS and the NZCPS should be provided.
- Local authorities play a key role in the protection of biodiversity. We request the opportunity to review and discuss the NPS for Indigenous Biodiversity before it is finalised.
- Broadening the definition of habitat beyond that in the National Priorities creates an unreasonable expectation of local authorities. Amend the definition of habitat to reflect the definition in *"Protecting Our Places: National priorities for protecting rare and threatened native biodiversity on private land"* (MfE, 2007) ie *"The place or type of area in which a living thing naturally occurs"*.
- Amend the definition of indigenous vegetation.
- Amend Policy 1 to reflect the objective.
- Amend Policy 2 to mirror the national priorities 1, 2 and 3.
- Retain the exclusion of habitats of threatened and at risk species from Policy 3.
- Amend Policy 3 to provide for instances where it is agreed to develop criteria to identify significant indigenous vegetation and significant habitat of indigenous fauna outside of the regional policy statement process e.g. Horizons Proposed One Plan.
- Amend policy 4 to ensure clarity of policy requirements.
- Retain the application of Policy 4 to the criteria of Policy 2(a) – (d).
- Retain the application of the five year time frame in Policy 4 to inclusion of the criteria in RPS.
- Provide guidance for Policy 5 that includes the core principles of offsetting and clear guidance on application.
- Amend Policy 6(e) to separate pest management to acknowledge the role pest management plays in biodiversity protection.

- Delete Policy 7 (d).
- Delete Policy 8.