

21 July 2022

Indigenous Biodiversity
Ministry for the Environment
PO Box 10362
Wellington 6143
Wellington

Via web portal [Link <https://consult.environment.govt.nz/biodiversity/npsib-exposure-draft/consultation/>]

Dear Sir/Madam,

**SUBMISSION FOR WATER NEW ZEALAND ON THE DRAFT NATIONAL POLICY
STATEMENT FOR INDIGENOUS BIODIVERSITY - EXPOSURE DRAFT**

INTRODUCTION AND OVERVIEW

1. Water New Zealand ("**Water NZ**") appreciates the opportunity to provide a submission on the Draft National Policy Statement for Indigenous Biodiversity - Exposure draft ("**Exposure Draft**")
2. Water NZ is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand's three waters (drinking water, wastewater and stormwater).
3. Water NZ is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Its 2,700 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists.
4. Water NZ is the leading voice for the three waters sector in New Zealand.
5. Water NZ notes that many of its members will be making their own submissions on the Exposure Draft and these submissions are intended to compliment those of its members.
6. In general Water NZ supports the more enabling framework for specific infrastructure which has been adopted in the Exposure Draft and consider that the amendments more appropriately recognise that water services infrastructure needs to locate within areas of ecological and biodiversity values at times to ensure the provision of secure, high-quality and safe drinking water, wastewater and stormwater services.

7. Overall, members support the broad intention to protect, maintain and restore indigenous biodiversity under the Resource Management Act 1991 (**RMA**). They acknowledge that ensuring New Zealand maintains and enhances its indigenous biodiversity is crucially important. As such, they are committed to ensuring the protection, maintenance and, where possible, restoration of indigenous biodiversity in the planning and delivery of complex water and wastewater projects.
8. The nature and locational requirements of water and wastewater infrastructure means this infrastructure is commonly required to locate in areas with indigenous flora and fauna. Hence, while members support the general approach of the Exposure Draft to protect, maintain and restore indigenous biodiversity, refinements are required to ensure that the NPS-IB does not result in perverse outcomes for water, wastewater and other essential infrastructure, which are critical for maintaining public health.
9. Water NZ have a few suggested amendments, to ensure that the NPS-IB does not have unintended consequences for the continuing operation and upgrading of essential water services infrastructure. Some of the more pertinent refinements are:
 - (a) Ensure the NPS-IB policy framework planning documents thereafter appropriately recognise and provides for essential infrastructure.
 - (b) Refine the circumstances where the adoption of a precautionary approach is appropriate.
 - (c) Amend the specific infrastructure exception in clause 3.11(2) to remove the requirement for lifeline utilities to demonstrate that:
 - i. the new specific infrastructure provides a significant national or regional benefit; and
 - ii. there is a functional or operational need for the new specific infrastructure to be in that particular location; and
 - iii. there are no practicable alternative locations for the development.
 - (d) Amend the fundamental concept of "maintenance of indigenous biodiversity" to recognise that that effects can be offset and compensated in accordance with the effects management hierarchy.
 - (e) Ensure that existing specific infrastructure can continue to operate as lawfully established or authorised and that such existing infrastructure can be appropriately maintained and upgraded in the future.
 - (f) Provide clarity as to when an action counts as a biodiversity offset or biodiversity compensation.
 - (g) Ensure that the criteria used to identify SNAs in Appendix 1 is not overly broad and does not result in unintended consequences.

Further amendments and comments are detailed below.

COMMENTS ON SPECIFIC QUESTIONS

10. Water NZ wishes to make a number of comments on specific provisions in the discussion document.

Part 1: Preliminary provisions

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

11. Water NZ generally supports this provision, as it provides clear guidance as to cooperation with other policies.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

12. Water NZ generally supports this provision. This is a clear principle which elevates and recognises the idea of indigenous biodiversity and how it relates to communities.

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

Please be specific about what aspects don't work, and why.

13. Water NZ generally supports this provision, and notes that it has improved in applicability from the earlier iteration.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

14. Water NZ generally supports this provision given it is in consistent with current case law and has been refined for greater practicability. The references to “residual” adverse effects are supported, which we consider allows more leeway for temporary effects. Water NZ considers that there could also be express allowance for small scale consents. In addition, to be consistent with the effects management hierarchy, Water NZ submits that the description of “maintenance of biodiversity” in clause 1.5(3) be amended as follows (amendments shown in underline):

“The maintenance of indigenous biodiversity requires at least no net reduction, as from the commencement date, in the following...”

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

Definition for "specific infrastructure"

15. Water NZ supports the new definition for "specific infrastructure" in the Exposure Draft which includes, infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002). However, the definition differs compared to the use of 'specified infrastructure' within the NPS-FM, which has a distinct definition. Consistency across the policies should be attained. In addition, specific infrastructure should be specifically identified in NPS-IB policies.

Definition of "existing activity"

16. The Exposure Draft defines "existing activity" as a subdivision, use or development that is "lawfully established" at the date the final NPS-IB commences, but excludes land uses covered by existing use rights under s10 of the Resource Management Act 1991 ("RMA").
17. Water NZ considers that there is a disconnect between the definitions for "existing activity" and "new subdivision, use or development" in that neither definition appears to capture fully consented activities that have not yet commenced or have only been partially implemented. We therefore, seek that the definition for "existing activities" be amended to include a subdivision, use or development that is "lawfully established or consented at the commencement date".
18. If fully consented activities that have not yet commenced, or which have only been partially implemented are not covered then this would be a fundamental change to the RMA's consenting framework whereby such land use activities are largely protected from subsequent policy statement or plan changes (until the consents for those activities may lapse). It is submitted that to exclude such activities will have significant unintended consequences for consented, but not yet fully implemented, essential infrastructure.

Definition of “freshwater ecosystems”

19. There is no definition of freshwater ecosystems, and as such it is unclear whether works within riparian margins fall under this legislation or under the NPS-FM. This is of concern for stormwater projects, many of which use riparian margins as part of green asset and water treatment design, such as constructed wetlands and streambank stabilisation, good practice recommends that such margin should be at least 10m but could extend to 20m or above for water quality outcomes (as an example we refer to the Riparian Buffers Section of the Auckland Council Design Manual). If they do fall under the NPS-IB, this poses a significant risk as the current specific infrastructure qualifiers may mean the

maintenance and other works associated infrastructure that have local benefits, will not fall under the effect management hierarchy pathways, and so will not be able to proceed. This will be a disincentive for undertaking such works in the future and drastically affect the maintenance of current green assets. Water NZ recommends inserting clarification that riparian margins fall under the controls set out under NPS-FM.

Definition of “biodiversity compensation”

20. In relation to submissions discussed further below, Water NZ submits amending the definition of “biodiversity compensation” as follows:

“biodiversity compensation means a conservation outcome that complies with the principles in Appendix 4, as appropriate, and...”

Definition of “biodiversity offset”

21. In relation to submissions discussed further below, Water NZ submits amending the definition of “biodiversity offset” as follows:

“biodiversity offset means a measurable conservation outcome that complies with the principles in Appendix 3, as appropriate, and results from actions that...”

Definition of “irreplaceability” and “vulnerable”

22. The Exposure Draft does not contain definitions for either "irreplaceability" / "irreplaceable" or "vulnerable" and it is unclear what is meant by these terms. Water NZ considers that there is the potential for these terms to be interpreted broadly and inconsistently which would preclude offsetting and/or compensation in a large number of cases. Again, this could have significant implications given that offsetting and compensation are the final options for proposals to meet the effects management hierarchy.
23. Water NZ seeks that definitions be added to the NPS-IB for both "irreplaceability", "irreplaceable" or "vulnerable".

Part 2: Objective and policies

Q. 6

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

24. Water NZ supports the general direction of the Exposure Draft to protect, maintain and restore indigenous biodiversity in a way that recognises tangata whenua as kaitiaki, and people and community as stewards, of indigenous biodiversity, and in a way that provides for the social, economic, and cultural wellbeing of people and communities now and in the future.

Q. 7

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

25. The Exposure Draft does not include a policy framework that specifically provides for infrastructure. While policy 10 seeks to recognise and provide for activities that contribute to New Zealand's social, economic, cultural and environmental well-being, this is expressed in general terms and does not specifically provide for essential infrastructure. The policy framework needs to include clear direction to provide for and recognise the locational constraints that apply to infrastructure. This is critical to ensure that there is direction to territorial authorities to enable infrastructure in their plans.
26. In addition, it is currently unclear as to the inter-relationship between Policy 3 and Part 3 (Implementation) more generally, as Policy 3 could be read to mean that a precautionary approach should be applied in all situations (and not just where clause 3.7 applies). To require that the precautionary approach be adopted in all situations would be overly restrictive and would render clause 3.7 essentially redundant. To provide clarity as to when the precautionary approach should be adopted, Water NZ seeks the following amendment to Policy 3 (amendments shown in underline):

A precautionary approach is adopted when considering adverse effects on indigenous biodiversity, where:

(a) the effects on indigenous biodiversity are uncertain, unknown, or little understood; but

(b) those effects are potentially significantly adverse.

Part 3: Implementation

Subpart 1: Approaches to implementing this National Policy Statement

Q. 8

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

27. Water NZ generally supports this provision, particularly the broader community representation afforded in this updated provision. Clarity as to whether Te Rito o te Harakeke is to be elevated above other principles and policy considerations would be welcome.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any

28. Water NZ generally supports this provision.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

29. Water NZ generally supports this provision.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

30. Water NZ generally supports this provision, in particular at 3.5(1)(b), where the protection of indigenous biodiversity is confirmed but does not preclude subdivision, use and development. This could be expanded to include specific reference to vital infrastructure as part of the use and development of land. Of note in this regard is that water services (drinking water, wastewater, stormwater) infrastructure is vital to the wellbeing of communities.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

31. Water NZ generally supports this provision.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

32. Water NZ generally supports a precautionary approach, but would suggest using “and” instead of the conjunction “but” – this creates a slightly higher threshold, because this also more flexibility for infrastructure uses.

Subpart 2: Significant natural areas

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

33. Water NZ generally supports this provision and notes the improved clarity in assessment criteria and the reduced onus on local authorities compared to the earlier draft.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

34. Water NZ generally supports this provision.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

35. Water NZ generally supports this provision but note the comments made in relation to 3.11 below.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

36. Clause 3.10(2) requires local authorities to make or change their policy statements and plans to include objectives, policies, and methods that require certain adverse effects on SNAs from new subdivision, use and development be avoided. Clause 3.11(2) however, provides an exception to the requirement for strong avoidance provisions for new specific infrastructure which provides significant national or regional public benefit. This exception is subject to the "functional or operational" need threshold, and there must be no practicable alternative locations for the new specific infrastructure. Provided there is a functional or operational need and there are no practicable alternative locations for new specific infrastructure, adverse effects on SNAs will instead be managed by applying the effects management hierarchy (per clause 3.10(3) and (4)).
37. Water NZ supports the exception for new specific infrastructure, however, considers that the thresholds in (a), (b) and (c) set an unreasonably high bar for this exception. In particular:

- (a) It is overly burdensome to require every lifeline utility application to demonstrate that the infrastructure provides a significant national or regional public benefit. A service operated by a lifeline utility will, by its nature, provides a significant national or regional benefit. However, requiring applicants to demonstrate this creates risk, particularly for smaller applications where the public benefit might be considered and assessed in isolation to the broader network.
 - (b) The requirement for there to be a functional or operational need and for there to be no practicable alternative locations for the new specific infrastructure is often incredibly challenging to demonstrate and burdensome for applicants.
38. The exception for specific infrastructure in section 3.11(2)(a), (b) and (c) is an overly restrictive approach that ignores the realities and requirements of essential infrastructure, as well as the critical contributions that infrastructure makes to the social and economic well-being of our communities. We therefore seek that a new exception to clause 3.10(2) be added to clause 3.11 for specific infrastructure which is delivering a service operated by a lifeline utility. For example, a new exception which provides that 3.10(2) does not apply, and all adverse effects on an SNA, must be managed instead in accordance with clause 3.10(3) and (4) if a new use, or development is required for specific infrastructure that delivers a service provided by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002). There should be no qualifiers to this exception.
39. In addition, there is no express provision for operations, maintenance, upgrade, and replacement activities for specified infrastructure to fall under the effects management hierarchy under the legislation. There is provision of “existing activities” under s 3.15 - as long as they do not extend their footprint - and new use and development under 3.11 as discussed above, but these are vague with respect to other infrastructure related activities, which means they are at risk of not being allowed to proceed. Hence, Water NZ recommends 3.11.2.a.i is amended to also cover the operation, maintenance, replacement and upgrade of specific infrastructure (and auxiliary works such as inspections) so these activities clearly fall under the effects management hierarchy.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

40. Water NZ generally supports this provision.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

41. Water NZ generally supports this provision.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

42. Water NZ generally supports this provision.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

43. Clause 3.15(1) and (2) require the identification of existing activities, or types of existing activities which may continue, provided that the effects on any SNAs (including cumulative effects):
- (a) Are no greater in intensity, scale, or character over time than at the commencement date; and
 - (b) Do not result in the loss of extent or degradation of ecological integrity of the SNAs.
44. If the above conditions are not met, clause 3.15(3) provides that the adverse effects must be managed in accordance with clause 3.10.
45. The reality of clause 3.15(1) and (2) on their own is that existing drinking water, stormwater and wastewater infrastructure within SNAs would not be able to expand, irrespective of the impacts this may have on the overall capacity of water and wastewater networks and the need for new infrastructure investment in its place. This is due to the proposed "cap" on the effects of existing infrastructure located within SNAs which must be no greater in character, intensity or scale than they were before the date the NPS-IB commences. It is also not clear whether the conditions in (a) and (b) can be met by undertaking mitigation / restoration works. Given a significant amount of existing three waters infrastructure is located within areas with ecological and biodiversity values, it would be absurd if this could not expand and upgrade to service the needs of people and growing communities.
46. While new clause 3.15(3) provides that if existing activities exceed the effects "cap", then adverse effects of the activity on the relevant SNA must be managed in accordance with clause 3.10, this is not considered to be sufficiently certain or enabling for existing specific infrastructure. Clause 3.10 applies to the effects on SNAs of any new subdivision, use, or development and 3.10(2) contains strong "avoid" directives. The upgrading and expansion of existing activities is not "new" subdivision, use, or development. To ensure that clause 3.15 does not have unintended consequences, Water NZ seeks that clause 3.15 be amended to provide that any exceedance of the effects "cap" resulting from the replacement or upgrading of existing specific infrastructure be managed by applying the effects management hierarchy.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

47. Water NZ generally supports this provision, noting that there is now a higher threshold for applying the effects management hierarchy compared to the earlier drafting and it more appropriately reflects case law. This will make the provision more workable.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any

48. Water NZ generally supports this provision.

Subpart 3: Specific requirements

Q. 24 Do you have any feedback on the workability of provision 3.18: Māori lands?

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

49. Water NZ generally supports this provision

Q. 25 Do you have any feedback on the workability of provision 3.19: Identified taonga?

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

Subject to the comments made above in relation to clauses 3.10 and 3.11 Water NZ generally supports this provision.

Q. 26 Do you have any feedback on the workability of provision 3.20: Specified highly mobile fauna?

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

50. Subject to the comments made above in relation to clauses 3.10 and 3.11 Water NZ generally supports this provision.

Q. 27 Do you have any feedback on the workability of provision 3.21: Restoration?

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

51. Subject to the comments made above in relation to clauses 3.10 and 3.11 Water NZ generally supports this provision.

Q. 28 Do you have any feedback on the workability of provision 3.22: Increasing indigenous vegetation cover?

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

52. Subject to the comments made above in relation to clauses 3.10 and 3.11 Water NZ generally supports this provision.

Q. 29 Do you have any feedback on the workability of provision 3.23: Regional biodiversity strategies?

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

53. Water NZ generally supports this provision.

Q. 30 Do you have any feedback on the workability of provision 3.24: Information requirements?

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

54. Water NZ generally supports this provision. The proposals will require increased resourcing for mana whenua, as well as increased training and capacity building of biodiversity / ecological specialists. Central government support for increasing this capacity is needed. Given this limited capacity we also recommend that part 3.24(1)(a) is amended from 'qualified and experienced ecologist' to 'suitably qualified ecologist' (in line with other regulatory provisions), and in addition that a threshold is included within NPS-IB as to when an ecologist report is required (excluding the need for an ecologist report for a minor consent activity with little or no effect on indigenous biodiversity outcomes).

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

55. Water NZ generally supports this provision.

Part 4: Timing

Q. 32 Do you have any feedback on the workability of the provisions under Part 4: Timing?

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

56. Water NZ generally supports this provision.

Appendices

Q. 33 Do you have any feedback on the workability of provision A: Representativeness criterion?

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

57. Water NZ generally supports this provision.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

58. Water NZ generally supports this provision.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

59. Water NZ generally supports this provision, however notes that there is no corresponding requirement for there to be an assessment of the importance or value of a particular habitat for a particular Threatened and At Risk species. Rather, value or significance is assigned on presence / absence of habitat only. Water NZ considers that further work

needs to be carried out to consider the implications of this, and whether this could lead to significant areas of improved pasture being identified as ecologically significant.

60. WaterNZ therefore seeks that criterion be added to Appendix 1 (C) requiring an assessing the importance or significance of habitat for indigenous biodiversity to ensure that habitat, which is assessed as having low value for Threatened or At Risk species, is not unintentionally identified as an SNA.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

61. Water NZ generally supports this provision.

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

Please explain why here.

62. Water NZ generally supports this provision, however "specified highly mobile fauna" is defined to mean the Threatened or At Risk species of highly mobile fauna identified at Appendix 2 to the NPS-IB. It is currently unclear what criterion has been used to identify the species included in Appendix 2 and Water NZ considers that further work be carried out, with input from ecologists, to ensure that this list is complete, fit for purpose and accurately captures the species intended.

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

63. Water NZ supports Appendix 3 (principles for biodiversity offsetting) and considers that these principles will assist in ensuring national consistency and certainty, however Water NZ considers that the requirement for all principles to be complied with in the NPS-IB before an action qualifies as an offset / compensation will have unintended consequences because there may be situations where not all principles are relevant, meaning that on a strict interpretation, an action does not comply with every principle. This could have significant implications for infrastructure, given that offsetting and compensation are the final options for proposals to meet the effects management hierarchy.
64. Water NZ therefore seeks that the NPS-IB be amended to reflect the approach in the Exposure Draft of the NPS-FM as follows (in underline and strikethrough):
- “Appendix 3: Principles for biodiversity offsetting

The following sets out a framework of principles for the use of biodiversity offsets. These principles apply to the use of biodiversity offsets if applied to manage the adverse effects of an activity. ~~represent a standard for biodiversity offsetting and must be complied with for an action to qualify as a biodiversity offset.~~

65. Principle 3 of Appendix 3 (Principles for biodiversity offsetting) to the NPS-IB provides:

“Net gain: the biodiversity values to be lost through the activity to which the offset applies are counterbalanced and exceeded by the proposed offsetting activity, so that the result is a net gain when compared to that lost. Net gain is demonstrated by a like-for-like quantitative loss / gain calculation of the following, and is achieved when the ecological values at the offset site exceeded those being lost at the impact site across indigenous biodiversity:

- (a) types of indigenous biodiversity, including when indigenous species depend on introduced species for their persistence;
- (b) amount; and
- (c) condition.”

66. Water NZ has concerns that if the term "like for like" is interpreted in the extreme, it could be that an offset can never be achieved for a particular ecosystem or habitat type. Habitat types include multiple features (attributes) that cannot all be replaced in exactly the same manner and configuration. Further, the requirement for net gain to be demonstrated by a like for like "quantitative" loss/gain adds further uncertainty. Quantitative offset models cannot be applied to most biodiversity values at the consenting or plan change stage of a project and so are of little use in determining whether a net gain offset is likely to be achieved.

67. Water NZ therefore seeks the following amendment (in underline and strikethrough):

“Net gain: the biodiversity values to be lost through the activity to which the offset applies are counterbalanced and exceeded by the proposed offsetting activity, so that the result is a net gain when compared to that lost. Net gain is demonstrated by a like-for-like ~~quantitative~~ loss / gain calculation of the following, and is achieved when the ecological values at the offset site exceeded those being lost at the impact site across indigenous biodiversity:

- (a) types of indigenous biodiversity, including when indigenous species depend on introduced species for their persistence;
- (b) amount; and
- (c) condition

For the purposes of this principle, "like-for-like loss / gain" means an offset that generates benefits to the same species, species assemblage, or ecosystem type that is impacted.”

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

68. Water NZ supports Appendix 4 (principles for biodiversity compensation) and considers that these principles will assist in ensuring national consistency and certainty.
69. As with Appendix 3 above, Water NZ seeks that the NPS-IB be amended to reflect the approach in the Exposure Draft of the NPS-FM as follows (in underline and strikethrough):

“Appendix 4: Principles for biodiversity compensation

The following sets out a framework of principles for the use of biodiversity compensation. These principles apply to the use of biodiversity compensation if applied to manage the adverse effects of an activity. ~~represent a standard for biodiversity compensation and must be complied with for an action to qualify as biodiversity compensation.~~”

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

Please be specific about what aspects don't work, and why. You can include suggestions for possible solutions if you have any.

70. Water NZ generally supports this provision.

Further Feedback

Q. 41 Any general feedback on the consultation

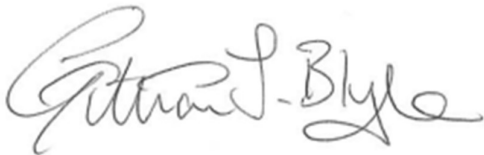
71. Further to the above specific questions, we note that the description of “adverse effects on indigenous biodiversity” has been removed from the fundamental concepts of the Exposure Draft. This fundamental concept should be reinstated because it provides clarity and certainty to infrastructure providers with respect to what “adverse effects” on indigenous include for the purposes of the NPS-IB. Given that the NPS-IB will have broad implications at both a district and regional level, certainty and consistency in application will be critical to ensuring infrastructure providers can manage adverse effects on indigenous biodiversity appropriately when planning and consenting new infrastructure.
72. In addition, given the increasing bush fire risk from the projected effects of climate change, and that the majority of water supply catchment areas are located within SNA's, it is recommended that the activities of fire break maintenance, and the construction of new fire breaks to help protect the public water supply system from this increasing risk, be recognised and more enabled. This may be covered by the suggested changes to clause 3.11.
73. Finally, MfE has recently consulted on proposed changes to the NPS-FM and National Environmental Standards for Freshwater. Water NZ has significant interest in national

direction that will impact on our existing and future operations and it is critical that these documents are not developed in isolation.

74. Water NZ members observe that there are a number of inconsistencies between the Exposure Draft of the NPS-FM and the Exposure Draft of the NPS-IB. Similar to the NPS-FM, clause 3.17 replicates the definition of improved pasture. It is unclear as to why the NPS-IB includes this definition, particularly when the Exposure Draft of the NPS-FM seeks to change this definition. Water NZ considers that the NPS-FM and NPS-IB should have consistent application in this regard to ensure its provisions are robust and workable, and seeks that the NPS-IB replicate the new approach to improved pasture as amended through the NPS-FM.

CONCLUSION

75. Water NZ thanks the Ministry for the opportunity to provide comments on the Exposure Draft.

A handwritten signature in dark ink, appearing to read 'Gillian Blythe', is positioned above a horizontal line.

Gillian Blythe
Chief Executive