

**BEFORE A HEARING PANEL  
OF HAMILTON CITY COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991 (**RMA**)

**AND**

**IN THE MATTER** of Proposed Plan Change 9 – Historic Heritage and  
Natural Environment

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**Memorandum on behalf of the Director-General of Conservation on the  
Implications of the National Policy Statement on Indigenous Biodiversity  
(NPS IB)**

Dated 22 September 2023

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## MAY IT PLEASE THE HEARING PANEL

The following matters are submitted on behalf of the Director-General of Conservation, Tumuaki Ahurei (**Director-General**) in relation to the implications of the National Policy Statement for Indigenous Biodiversity (**NPS IB**) for proposed Plan Change 9 – Historic Heritage and Natural Environment to the Operative Hamilton City District Plan (**PC 9**).

1. The Director-General agrees with the evidence that has been submitted by Hamilton City Council but notes that there are some additional matters relating to the implications of the NPS IB. Ms Sycamore has provided planning evidence on these additional implications. Ms Sycamore has also suggested some amendments to the provisions on the relevant topics (e.g. SNA Mapping, indigenous biodiversity outside SNAs, noise and lighting effects on long-tailed bats). The Director-General submits that these suggested new policies and amendments are needed to give effect to the objectives and policies of the NPS IB and s 6 of the RMA and to meet Council's functions under s 30(1)(b)(iii) of the RMA.
2. These submissions are limited to addressing:
  - (a) The requirement in the NPS IB for an integrated approach;
  - (b) The implications of the NPS IB on ss 6(c) and 31(1)(b)(iii) of the RMA;  
and
  - (c) Unmapped areas that meet the significance criteria.

### The requirement in the NPS IB for an integrated approach

3. The objective of the NPS IB is to maintain indigenous biodiversity across Aotearoa so that there is at least no overall loss in indigenous biodiversity.<sup>1</sup> Policy 5 explicitly states that indigenous biodiversity is to be "*managed in an integrated way, within and across administrative boundaries.*"<sup>2</sup> The

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<sup>1</sup> NPS IB cl 2.1.

<sup>2</sup> NPS IB cl 2.2, Policy 5.

implementation method to give effect to this objective and policy requires local authorities to:<sup>3</sup>

- a) recognise the interconnectedness of the whole environment and the interactions between the terrestrial environment, freshwater, and the coastal marine area; and
  - b) provide for the coordinated management and control of subdivision, use and development, as it affects indigenous biodiversity across administrative boundaries; and
  - c) work towards aligning strategies and other planning tools required or provided for in legislation that are relevant to indigenous biodiversity.
4. In order to achieve integrated management, it will be necessary for PC9 to give effect to and be in harmony with Te Ture Whaimana o Te Awa o Waikato. It will also be necessary for the SNA rules to apply citywide (including the Peacocke Structure Plan Area).

**What are the implications of the NPS IB on ss 6(c) and 31(1)(b)(iii) of the RMA?**

5. The NPS IB provides national direction on how the obligations in s 6(c) (*protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna*) and s 31(1)(b)(iii) (*maintenance of indigenous biodiversity*) should be applied consistently across Aotearoa. Part 3 of the NPS IB sets out the implementation methods for the objectives and policies in the NPS IB. In essence, the NPS IB sets out a bottom lines approach to implementation (i.e. the NPS IB sets out certain forms of implementation that must be applied). But it is also permissive (i.e. local authorities can include additional objectives and policies and methods to protect and maintain indigenous biodiversity). Therefore, ss 6(c) and s 31(1)(b)(iii) continue to apply and the NPS IB allows district plans to be more stringent (but not less stringent) than the NPS IB.

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<sup>3</sup> NPS IB cl 3.4.

### **Unmapped areas that meet the significance criteria**

6. As noted above, the objective of the NPS IB is to maintain indigenous biodiversity across Aotearoa so that there is at least no overall loss in indigenous biodiversity.<sup>4</sup>
7. Ms Sycamore has noted that the following NPS IB policies are relevant to unmapped areas that meet the significance criteria:
  - a) Policy 3: A precautionary approach is adopted when considering adverse effects on indigenous biodiversity.
  - b) Policy 6: Significant indigenous vegetation and significant habitats of indigenous fauna are identified as SNAs using a consistent approach.
  - c) Policy 7: SNAs are protected by avoiding or managing adverse effects from new subdivision, use and development.
  - d) Policy 8: The importance of maintaining indigenous biodiversity outside SNAs is recognised and provided for.
8. Ms Sycamore's evidence is that if Council becomes aware (either through a resource consent application, notice of requirement or any other means) that an area is identified as meeting the significance criteria, then it should be immediately protected to give effect to the objectives and policies in the NPS IB and s 6(c) of the RMA.<sup>5</sup>
9. The implementation method for the mapping of SNAs in a district plan is set out in clause 3.8(6) of the NPS IB. If Council becomes aware (as a result of a resource consent application, notice of requirement or any other means) that any area may be significant then implementation method 3.8(6) requires Council to conduct an assessment of the area as soon as practicable, and if a new SNA is identified, include it in the next appropriate plan or plan change.<sup>6</sup>

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<sup>4</sup> NPS IB cl 2.1.

<sup>5</sup> Ms Sycamore, Supplementary Statement of Evidence, paragraphs 12 to 23.

<sup>6</sup> Please note that clause 4.2 of the NPS IB requires notification within 5 years of the commencement date of the NPS IB (being within 5 years of 4 August 2023).

10. However, implementation method 3.8(6) of the NPS IB does not defer or diminish Council's obligation under the objectives and policies of the NPS IB and ss 6(c) and 31(1)(b)(iii) of the RMA to protect an area that has been identified as meeting the significance criteria.
11. Policy 3 of the NPS IB requires Council to adopt a precautionary approach when considering adverse effects on indigenous biodiversity. A precautionary approach is a duty to act where there is threat of significant environmental harm despite lack of full scientific certainty.<sup>7</sup>
12. The Director-General submits that the two new policies for Chapter 20 as suggested Ms Sycamore are required to give effect to the objectives and policies of the NPS IB and s 6(c) of the RMA and to meet Council's functions under s 30(1)(b)(iii) of the RMA.



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<sup>7</sup> e.g. Principle 15 1992 Rio Declaration; 1992 Convention on Biological Diversity, 1992 UN Framework Convention on Climate Change, 2015 Paris Agreement.