

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER Proposed Change 1 to the Regional Policy Statement
for the Wellington Region Hearing Stream 6
Indigenous Ecosystems

STATEMENT OF PLANNING EVIDENCE OF MAGGIE ROSE BURNS

26 January 2024

INTRODUCTION

1. My name is Maggie Rose Burns.
2. I hold a Bachelor of Environmental Planning from the University of Waikato. I am an intermediate member of the New Zealand Planning Institute.
3. I have been a practicing planner since 2018 and I am currently employed as a Senior Planner at Kāhu Environmental.
4. I have prepared and presented expert planning evidence on regional policy statements, district plans and resource consents. I have experience in assessing draft and proposed regional policy statements and regional and district plans and assisting in preparing submissions on policy statements and plan content and resource consents.
5. I have been involved in this matter since July 2022 and was involved in the preparation of the Rangitāne o Wairarapa submission on Plan Change 1 to the Greater Wellington Regional Policy Statement. I have prepared and presented evidence at Hearing Stream 2 – Integrated Management, Hearing Stream 3 – Climate Change and Hearing Stream 5 – Freshwater.

CODE OF CONDUCT

6. I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023. I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving oral evidence. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

MATERIAL RELIED ON

7. I have read and rely on the evidence of Amber Craig, also prepared on behalf of Rangitāne o Wairarapa.
 - In preparing my evidence I have read the following:
 - The Regional Policy Statement for the Wellington Region
 - The material comprising Proposed Plan Change 1
 - The section 32 Report for Proposed Plan Change 1 where it relates to matters addressed in Hearing Stream 6
 - The submissions and further submissions on PC1 made by Rangitāne o Wairarapa.
 - The section 42A officer report for Hearing Stream 6 – prepared by Pamela Guest and Jerome Wyeth. I refer to this as the section 42A report in my evidence.
 - The Guidance on the National Policy Statement for Indigenous Biodiversity General Guidance prepared by the Ministry for the Environment 2023.

- The Guidance on the National Policy Statement for Indigenous Biodiversity Information for tangata whenua prepared by the Ministry for the Environment 2023.

SCOPE OF EVIDENCE

8. For this hearing Rangitāne o Wairarapa have asked me to provide expert planning evidence in relation to the submission and further submissions made by Rangitāne o Wairarapa on the Wellington Regional Policy Statement – Plan Change 1 (Change 1) for those provisions being addressed in Hearing Stream 6.
9. Rangitāne o Wairarapa made submissions and/or further submissions on the following provisions that have been identified in the section 42A report as forming part of Hearing Stream 6.
 - Definitions:
 - Biodiversity compensation
 - Biodiversity offsetting
 - Ecological connectivity
 - Ecological integrity
 - Ecosystem health
 - Enhancement
 - Maintain/maintained/maintenance
 - Natural uncommon ecosystems
 - Protect (in relation to indigenous biodiversity)
 - Resilience (in relation to indigenous biodiversity)
 - Restoration
 - Te Rito o te Harekeke

- Threatened ecosystems or species
 - Indigenous Ecosystems chapter introduction
 - Appendix 1A
 - Method 32
 - Method 53
 - Method IE.2
 - Method IE.3
 - Method IE.4
 - Objective 16
 - Objective 16A
 - Objective 16B
 - Objective 16C
 - Policy 23
 - Policy 24
 - Policy 47
 - Policy 61
 - Policy IE.1
 - Policy IE.2
 - Policy IE.3
 - Policy IE.4
10. I have not individually addressed each of the submission points. Unless specifically addressed in my evidence, I generally agree with and support the recommendations in the section 42A report.
11. In this evidence I cover:
- Giving effect to the National Policy Statement for Indigenous Biodiversity (NPS-IB)
 - Policy IE.2

- Policy 23
- Policy 24

STATUTORY CONTEXT

12. I generally agree with and rely on the statutory assessment in the section 32 and section 42A reports. I only restate or expand on other higher order documents that are relevant to my evidence below.

National Policy Statement for Indigenous Biodiversity (NPS-IB)

13. The National Policy Statement for Indigenous Biodiversity came into effect on the 4th of August 2023.
14. The NPS-IB was developed to direct councils to establish consistent approaches in policy, plans and strategies to maintain indigenous biodiversity¹. A singular objective is provided:

2.1 Objective

1) The objective of this National Policy Statement is:

a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and

b) to achieve this:

i. through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and

ii. by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and

- iii. *by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and*
 - iv. *while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.*
15. The NPS-IB sets out decision-making principles under clause 1.5 that must inform the implementation of the National Policy Statement. These are set out below:
- a) *prioritise the mauri, intrinsic value and wellbeing of indigenous biodiversity:*
 - b) *take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi):*
 - c) *recognise the bond between tangata whenua and indigenous biodiversity based on whakapapa relationships:*
 - d) *recognise the obligation and responsibility of care that tangata whenua have as kaitiaki of indigenous biodiversity:*
 - e) *recognise the role of people and communities (including landowners) as stewards of indigenous biodiversity:*
 - f) *enable the application of te ao Māori and mātauranga Māori:*
 - g) *form strong and effective partnerships with tangata whenua.*
16. The NPS-IB contains several specific requirements which ensures the role of mana whenua/tangata whenua is provided for in the management and protection of indigenous biodiversity including:
- *Policy 1: Indigenous biodiversity is managed in a way that gives effect to the decision-making principles and takes into account the principles of the Treaty of Waitangi.*

- *Policy 2: Tangata whenua exercise kaitiakitanga for indigenous biodiversity in their rohe, including through: (a) managing indigenous biodiversity on their land; and (b) identifying and protecting indigenous species, populations and ecosystems that are taonga; and (c) actively participating in other decision-making about indigenous biodiversity.*
 - Clause 3.2 Roles of Decision-Making Principles
 - Clause 3.3 Tangata whenua as partners
17. The NPS-IB also goes into further detail on the management of Māori land (clauses 3.12 and 3.18) and acknowledged and identified taonga (clause 3.19).

GIVING EFFECT TO THE NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

[Submission points S168.014, S168.017, S168.067 - S42A report – paras 76-107]

18. The original submission from Rangitāne o Wairarapa requested to:
- Retain provisions that seek to give effect to the exposure draft of the NPS-IB.
 - Seek amendments to ensure the proposed policies and definitions are consistent with best practice and give full effect to the NPS-IB when it becomes operative.

- Include a policy, or method, or both, providing for the development of a regional and local expression of Te Rito o Te Harekeke, to be codesigned with tangata whenua and incorporated into the Regional Policy Statement by no later than 2024.
19. The submission was prepared when the NPS-IB was in exposure draft format, and it was expected that the use of Te Rito o te Harekeke would remain.
20. The section 42A officer has recommended the retention of the indigenous ecosystems provisions through Change 1 and is of the opinion that there are no scope impediments to giving effect to certain NPS-IB provisions through Change 1².
21. I agree with the section 42A officer's recommendations regarding retaining the indigenous ecosystem provisions in Change 1 and support the reasoning provided in the 42A report, that there are clear legal requirements to give effect to the NPS-IB where practicable and within scope. This mirrors my recommendation in my evidence for Hearing Stream 3 that *'Given the timing, there is no requirement to give full effect to the NPS-IB, however, amendments can and should be made insofar as they are in line with the scope of submissions.'*
22. I also agree with and reinforce the comment from the 42A officer that:
- ...there is a high level of certainty and confidence that giving effect to certain NPS-IB provisions through Change 1 also helps meet key statutory requirements in the RMA, including sections 6(c), 6(e), 7(a), 7(aa), 7(d), 30(1)(c)(iiia) and (ga) and 31(b)(iii), regardless of whether the NPS-IB is amended as signalled by Government³.*

² Section 42A report, paragraph 91

³ Section 42A report, paragraph 91 (d)

23. I agree with the section 42A officer's recommendations regarding replacing Te Rito o te Harekeke with the decision-making principles from the NPS-IB. However, I recommend additional amendments to ensure it is clear what the process for implementation and development of the local expressions of those principles will be.
24. The NPS-IB is specific in its requirement to involve tangata whenua (to the extent they wish to be involved) as partners in the management of indigenous biodiversity⁴. This directive strengthens the role of tangata whenua in the resource management system for decision-making for indigenous biodiversity⁵.
25. I have discussed the partnership directive in my previous evidence for Hearing Stream 2. At paragraph 58 of that evidence statement, I said that:
- Partnership refers to the cooperative and mutually beneficial relationship between mana whenua/tangata whenua and the Crown. Partnership also recognises that mana whenua/tangata whenua have a unique status as indigenous peoples. Partnership entails an obligation of active engagement and involvement in decision making. This is clearly identified in the development of Te Tiriti principles. Section 8 of the Resource Management Act 1991 requires that principles of the Treaty of Waitangi are taken into account, including the principle of partnership.*
26. The use of the partnership directive in clause 3.3 of the NPS-IB therefore provides a strong and specific requirement to ensure tangata whenua are involved in the management and decision-making process for indigenous biodiversity.

⁴ Clause 3.3 of the National Policy Statement for Indigenous Biodiversity

⁵ Ministry for the Environment National Policy Statement for Indigenous Biodiversity: Information for tangata whenua. Published July 2023

27. Clause 3.3 of the NPS-IB also provides detail on partnering with tangata whenua in the management of indigenous biodiversity and includes a requirement to partner with tangata whenua when identifying the local approach to giving effect to the decision-making principles.
28. This is a similar directive to the National Policy Statement for Freshwater Management (NPS-FM) and the process that has been undertaken to provide local iwi expressions of Te Mana o te Wai. A process to identify how the decision-making principles will be applied, in partnership with tangata whenua, is necessary in the context of indigenous biodiversity. This process is not currently specified in the Regional Policy Statement and will need to be developed as a matter of priority.
29. I highlight and acknowledge that, as currently drafted, the amended indigenous biodiversity provisions are interim to give effect to the NPS-IB as far as is possible and practical within the scope of submissions. In my opinion, the interim provisions must be clear in how the local expressions of the principles will be given effect to and implemented, given that the Regional Policy Statement provisions will apply both while the local expressions are being developed and once they have been confirmed. The changes to the provisions that I recommend are intended to provide more certainty in how this process will occur.

POLICY IE.2

[Submission point S168.079 - S42A report – paras 397-411]

30. The original submission from Rangitane o Wairarapa supported Policy IE.2 and requested it was retained as notified.
31. The section 42A officer has recommended retaining much of the notified version of IE.2, but replacing Te Rito o te Harekeke with the decision-making principles for indigenous biodiversity from the NPS-IB.
32. I agree in part with the section 42A officer's recommendation. I support replacing Te Rito o te Harekeke with the decision-making principles for biodiversity. While I also support Method IE.1, which provides the pathway for working in partnership with mana whenua/tangata whenua to establish local expressions of the decision-making principles, I consider that more explicit and obvious linkages between policies and method IE.1 are necessary to ensure that:
 - a) The decision-making principles in the NPS-IB are given effect to in the absence of local expressions and
 - b) Local expressions are given effect to once they are developed.
33. Clause 3.3 of the NPS-IB requires that the Council must work in partnership with tangata whenua to establish the local expression of decision-making principles. This work still needs to be done. In my opinion, this means that the proposed provisions are somewhat interim in nature. As drafted in the 42A report, it is not clear when and how the local expressions of the decision-making principles must be given effect to.

34. Additionally, I recommend further amendments to Policy IE.2 to provide clarity on the directiveness of this policy. As currently drafted, the policy includes:
- Having **particular regard** to..
 - **Enabling** the exercise of kaitiakitanga...
 - **Providing for** mana whenua/tangata whenua values...
 - **Giving effect to** the decision making principles [emphasis added].
35. All of these statements provide an indication of the directiveness of the policy and therefore what level the matters listed must be actioned in planning processes. As currently drafted, this is confusing and, depending on interpretation, is unlikely to provide the level of protection or consideration that is intended.
36. I recommend that 'mana whenua values' is moved to the chapeau of this clause as a reflection of section 6 (e) of the RMA and as encompassing the other matters more accurately. I also recommend the addition of '*and relationship.*' I discuss in my evidence for Hearing Stream 2, relationships and values are distinct but overlapping concepts (Paragraph 23) and that, '*as currently worded, the issue does not adequately recognise and provide for the relationship of Maori with te taiao in accordance with section 6 (e). It currently only addresses elements (values) that contribute to the relationships mana whenua/tangata whenua have with the environment*' (paragraph 25, in reference to Overarching Issue 3).
37. The use of 'relationship' is also reflected in the decision-making principles in the NPS-IB which states:
- (c) recognise the bond between tangata whenua and indigenous biodiversity based on whakapapa relationships.*

38. In order to achieve further clarity in this policy, I recommend the following amendments to Policy IE.2:

When considering an application for a resource consent, notice of requirement, or a plan change, variation or review of a district plan for subdivision, use or development that may impact on indigenous biodiversity, ~~particular regard shall~~ mana whenua/tangata whenua values and relationship associated with indigenous biodiversity shall be recognised and provided for, ~~be given to enabling mana whenua/tangata whenua will be enabled to exercise their roles as kaitiaki~~, including by, but not restricted to:

- a) ~~Providing for mana whenua/tangata whenua values associated with indigenous biodiversity, including~~ Giving effect to the decision-making principles for biodiversity and, once they are established, the local expressions of the decision-making principles for indigenous biodiversity developed through Method IE.1 ~~Te Rito o te harakeke:~~
- b) *Enabling mana whenua/tangata whenua to exercise their roles as kaitiaki;*

...

39. Additionally, I support the inclusion of the definition of decision-making principles but suggest that it also includes wording as follows to ensure the local expressions are also given effect to once they are developed:

...

The decision-making principles for indigenous biodiversity includes any local expressions developed through Method IE.1.

40. This will ensure that the local expressions, and the decision-making principles in the NPS-IB, are given effect to wherever they are mentioned throughout the policy statement. While this may be somewhat of a repetition with Policy IE.2, having both ensures that the provisions are connected, and that any instances of the decision-making principles are captured, particularly while the indigenous biodiversity provisions are in an interim state.

POLICY 23

[Submission point S168.072 - S42A report – paras 233-261]

41. The original submission from Rangitāne o Wairarapa supported Policy 23 and requested it was retained as notified.
42. The section 42A officer has recommended amendments to this policy including that the timeframe for implementation is moved to 'as soon as reasonably practicable or before August 2028' (as per the direction in Part 4 of the NPS-IB).
43. I largely agree with the section 42A officer's recommended amendments on this policy, however, disagree with extending the date to achieve the policy outcome. I also disagree with any other instances where the timeframe has been moved.
44. The impact on indigenous biodiversity can also disproportionately affect tangata whenua and delayed action furthers this impact. Ms Craig in her evidence at paragraph 18 states.:

We as tangata whenua are intrinsically linked to our waters and our taiao. If they die, so too does our people.

45. There is no clarification from the section 42A officer on what 'as soon as reasonably practicable' means. When notified, the timeframe for this policy was June 2025. If this was the timeframe provided at notification, it stands to reason that this date was possible and practicable for Council to achieve. Any movement away from it should have clear justification, which has not been provided in the section 42A report.

POLICY 24

[Submission point S168.073, S168.074, S168.075, S168.076 - S42A report – paras 262-339]

46. The original submission from Rangitāne o Wairarapa opposed Policy 24A in part requesting the following amendments:
- Accurately reflect the role of offsetting and compensation as provided for by the Exposure Draft of the NPS-IB;
 - be consistent with and give effect to the NPS-IB (on the presumption this is expected to be gazetted before the plan change hearings commence, and on the basis the wording of the NPS is unlikely to change), particularly with respect to the limits to offsetting and compensation,
 - Amend clause c so that it makes grammatical sense.
 - Ensure the policy wording and proposed definitions adopt a consistent approach with respect to the 10% net gain for offsetting and 10% net benefit for compensation.

47. The section 42A officer has recommended amendments to Policy 24 to ensure it aligns with and gives added visibility to relevant effects management hierarchies and associated pathways/exceptions for certain activities in national direction and introduces a new policy 24A to give effect to the offsetting and compensation principles in the NPS-IB and NPS-FM.
48. The section 42A officer recommends Policy 24 is amended as follows:

As soon as reasonably practicable and by no later than 4 August 2028, District and regional plans shall include policies, rules and methods to protect indigenous ecosystems and habitats with significant indigenous biodiversity values from inappropriate subdivision, use and development, including by applying:

- a) Clause 3.10 and Clause 3.11 of the National Policy Statement for Indigenous Biodiversity 2023 to manage adverse effects on significant indigenous biodiversity values in the terrestrial environment;*
- b) Policy 11 of the New Zealand Coastal Policy Statement 2010 to manage adverse effects on indigenous biodiversity values in the coastal environment; and*
- c) Policies 18A and 18B in this Regional Policy Statement to manage adverse effects on the values and extent of natural inland wetlands and rivers.*

49. As amended, Policy 24 simply refers to clauses and policies in the NPS-IB, New Zealand Coastal Policy Statement 2010 (NZCPS) and the Regional Policy Statement. I consider that this cross reference makes this policy redundant. District and Regional Plans must give effect to National Policy Statements and Regional Policy Statements (sections 62(3), 67(3) and 75(3) RMA). The addition of this policy in the Regional Policy Statement adds unnecessary duplication and does not provide further clarity or interpretation at a local scale of how effects on indigenous biodiversity will be managed.
50. National Policy Statements are also subject to change and the current NPS-IB may be amended or replaced. With the current cross-referencing approach, when and if the NPS-IB is replaced or repealed this policy will no longer have any weight. This will create a gap in the Regional Policy Statement that means it does not sufficiently recognise and provide for section 6(c) of the RMA. If the clauses are cross referenced with the NPS-IB, they would need to specify the version and date of the current NPS-IB.
51. I agree with the addition of Policy 24A and the recommended amendments which clarify the use of the effects management hierarchy and provides clarity on the use of offsetting and compensation principles for district and regional plans. I disagree with the amendments to Policy 24.

52. The key issue that Policy 24 needs to address, with the offsetting and compensation principles moved to the new proposed policy 24A, is to ensure the policy gives effect to the clauses listed (Clauses 3.10 and 3.11 of the NPS-IB, Policy 11 of the NZCPS). In my opinion, referring to these clauses do not give effect to them. I suggest that options 2 or 3 in the 42A report are more appropriate and effective for implementing the NPS-IB and NZCPS. I acknowledge that the 42A officer has noted that this is an ongoing issue throughout Change 1 and the approach will need to be consistent. This will need to be further addressed in Hearing Stream 7.

Signature of Maggie Rose Burns

Dated 26th January 2024



Maggie Rose Burns