Environment Institute of Australia and New Zealand Inc.

Ministry for the Environment
Wellington

Date: 20 July 2022

Dear MFE,

SUBMISSION: Exposure Draft National Policy Statement for Indigenous Biodiversity 2022.

This letter sets out the Environmental Institute of Australia and New Zealand (EIANZ) submission on the '**Exposure Draft National Policy Statement for Indigenous Biodiversity 2022'**.

We acknowledge the effort that the Ministry for the Environment have put into receiving submissions and feedback on the introduction of the NPS-IB document in late 2019 to early 2020.

Our feedback is focused on the **rigour and feasibility** of the proposed amendments to the NPS-IB particularly in terms of consistency with other national policy and implementation.

About EIANZ

Founded in 1987, EIANZ is a professional association of some 2000 environmental practitioners from across Australia and New Zealand. We provide opportunities for professional and academic dialogue across all sectors of the environmental industry. The Institute membership includes specialists in a range of environmental disciplines: climate change, contaminated land, planning, engineers, law, environmental science, and ecology.

A significant initiative of EIANZ is the Certified Environmental Practitioner (CEnvP) Scheme, which is Australasia's first accreditation scheme designed exclusively for environmental practitioners and recognises environmental professionals in line with their professional counterparts from engineering, accounting, planning and architecture. Several members of EIANZ hold specialist CEnvP ecologist certifications. Three members residing in NZ are Fellows of the EIANZ recognising the contributions to environmental practice over several decades. These credentials are significant in the recognition of environmental practice in New Zealand.

Our approach

The feedback expressed in this letter is formed from a consensus approach amongst practitioners within EIANZ. The main thrust of the feedback was developed at a workshop of some twenty practitioners in Auckland, and the outcome of that gathering circulated to all attending members for comment.

Key submission items from EIANZ

Submission Point 1: Alignment and integration between NPS-IB and other national policy and environmental standards

Part 1: Preliminary Provisions (1.1-1.7)

Alignment and integration with other national policies and environmental standards is essential to protect and enhance indigenous biodiversity. The exposure draft provides some direction regarding the exclusion of coastal marine area and aquatic indigenous biodiversity including direction regarding the relationship with the NZCPS but does not include direction for potential conflicts with the NPS-FW.

The EIANZ sees the integration and alignment of these three key policy documents as fundamental in achieving overarching indigenous biodiversity protection. As such, there is a need for streamlining to occur in both legislations, including consistency of the provisions for threatened species, definitions and clarification of both application and approach between national policy statements (FW and NZCPS), as well as integration with NPS Urban Development and NES Forestry.

We would also like to point out the importance of integration with the future Natural and Built Environments and Strategic Planning Act particularly if this policy document will be used for the establishment of environment limits for the protection of ecological integrity.

Submission Point 2: Availability and accessibility of biodiversity data

1.5 Fundamental Concepts

EIANZ acknowledges the challenge surrounding capturing and making accessible data for a range of fauna species, however EIANZ also identifies there is a challenge in implementing "at least no reduction in the size of population of indigenous species" in the absence of extensive baseline data to compare against being accessible. The increased accessibility of information from databases such as those stewarded by DOC would assist in allowing this data to be accurately captured.

EIANZ suggests that a standardised platform for country-wide data capture would assist implementation efficacy, such as a centralized database for fauna and pest species records.

Submission Point 3: Support for Objectives and Policies

Part 2: Objectives and Policies

EIANZ are generally supportive of the objectives and policies within the NPS-IB but reiterate that policy integration is important to achieve the overarching ecological objectives, including integration with NZCPS, NES Forestry, NPS-FM, and NPS Urban Development.

Submission Point 4: Integrated, holistic approach to biodiversity protection

Part 3 Subpart 1: Approaches to implementing the NPS (3.2-3.7).

Section 3.4 outlines the need for an integrated approach to implementation including recognising the interactions between terrestrial, freshwater, and coastal marine environments. There is, however, no further detail on how integration is to be achieved particularly in terms of alignment and integration with the NPS Freshwater and NZCPS. In addition, the management of highly mobile fauna in this

context is also problematic without further discussion where habitats overlap between these ecological domains.

The implementation of the NPS relies primarily on a regulatory approach to biodiversity protection. In Section 3.5, local authorities must consider the importance of forming partnerships, and that people and communities are critical to biodiversity protection and enhancement. This promotes consideration of the importance of people and communities in protecting biodiversity but does not set out a framework for non-regulatory mechanisms and lacks incentives for landowners to protect, enhance, and retore indigenous biodiversity. Although a regulatory approach may be effective, a policy direction is required for non-regulatory incentives beyond what is currently provided for in the exposure draft.

Furthermore, EIANZ recognises that there may be a benefit in allowing implementation to be undertaken at an individual council basis, however the NPS-IB policy allows substantial discretion to council to interpret this into local plans which may reduce the standardized implementation of this policy.

Submission Point 5: Consistent, accurate significance assessment for SNAs and management thereof

Part 3 Subpart 2 Significant Natural Areas (3.8 – 3.17)

Identification and assessment of SNAs (3.8)

The EIANZ is generally supportive of the significance criteria set out in Appendix 1. We note however, that assessment of significance relies on experience and expertise of the ecologist undertaking the assessment.

Appendix 1, section 3.8 (4, 5 & 6) requires confirmation of the significance assessment by a "suitably qualified ecologist" and in section 3.24 – "qualified and experienced ecologist". These terms are not defined in the NPS-IB or other policies and EIANZ seeks clarification / definition to ensure that high quality, accurate significance assessments are undertaken consistently.

The EIANZ endorses the definition of "suitably qualified", as it pertains to ecology, as a person with tertiary qualifications in: ecology, natural resource management, environmental science; and a minimum of 10 years' full time experience in the functional areas of ecological practice recognising supervisory, research, policy, regulation, community conservation work, and teaching as contributing in part or whole to the 10 years 'functional experience' (CEnvP Ecology specialization, https://www.cenvp.org/guidance-notes/ecology-specialist).

With respect to the workability of the assessment criteria themselves, we note that under Criterion C: Rarity and distinctiveness, that there is no assessment on the importance or value of a particular habitat for Threatened or At-Risk species. Rather, value or significance is assigned on presence/absence of habitat only. On this basis that most improved pasture in the Auckland, Waikato or Northland region could arguably meet the test for ecological significance because improved pasture typically provides habitat for the At Risk (declining) copper skink and/or the Nationally Threatened (Nationally Critical) long-tailed bat.

A criterion for assessing the importance or significance of habitat for indigenous biodiversity values should be developed (equivalent to Table 5 EIANZ Guidelines[1]) so that habitat assessed as having low value for Threatened or At-Risk species is excluded as SNA.

Management of adverse effects on SNAs (3.10)

Adverse effects on SNAs to be avoided include an overly broad range of ecological effects that typically arise as a result of new subdivision, use, or development.

Further qualification regarding the types of activities or clarification on the scale of adverse effects is needed to differentiate between activities or level of effects that must be avoided and those where the application of the effects management hierarchy is appropriate. This will better support the policy direction within the NPS-IB regarding appropriate land-use and development whilst safeguarding indigenous biodiversity.

This will also align with the approach taken in the NZCPS with respect to threatened species and ecosystems.

Management of indigenous biodiversity outside SNAs (3.16)

As drafted, the policy direction is that any adverse effect that is deemed irreversible (interpreted as permanent adverse effect) will require effects management to maintain indigenous biodiversity outside of SNAs. Further clarification is required on what constitutes indigenous biodiversity (native vegetation, non-native vegetation that provide habitat for indigenous fauna, or indigenous fauna) as well as what constitutes 'maintain' in this context.

Submission Point 6: Implementation and workability of specific requirements

Part 3 Subpart 3 Specific Requirements (3.18-3.25)

Protections on Māori lands, Taonga species, sustainable customary use (3.18)

There may be possible issues with resourcing for mana whenua, in terms of the requirements of upskilling and understanding of statutory obligations required for the protection of indigenous biodiversity on mana whenua land, and for the identification of taonga.

There may need to be some provision for the way in which multiple tangata whenua who hold mana whenua over one rohe will be recognised, and if this may result in different status being held for taonga species identification (Subpart 3.19).

EIANZ would like to acknowledge that there is a potential lack of need to implement management of biodiversity on Māori land by anyone other than mana whenua (Subpart 3.18).

EIANZ supports the sustainable customary use of taonga, however, there is need for this to align with the biodiversity strategy to achieve no reduction in populations (Subpart 3.19). The NPS-IB is unclear regarding how this may be regulated and managed to ensure it is not undoing the goal of bolstering populations.

Submission Point 7: Highly mobile fauna habitat utilisation and quality

Highly mobile fauna areas (3.20)

[1] J Roper-Lindsay and others. (2018). Ecological Impact Assessment. EIANZ guidelines for use in New Zealand: terrestrial and freshwater ecosystems. Second Edition.

Policy 15 provides that areas outside SNAs that support the 'specified highly mobile fauna' listed in Appendix 2 are identified and managed. While we support the inclusion of a criterion that recognises threatened species outside of SNAs, we are concerned that the identification of an area as a "high mobile fauna area" is not clear.

The reasons for this are as follows:

1. There are often situations where highly mobile fauna are incidentally seen in areas where there may not be appropriate habitat for them to establish long-term and are not necessarily site bound. For example, would a transient or occasional species in an area for a short period (or a series of short periods) for feeding or dispersal purposes instigate that area as a "highly mobile fauna area"?
2. Additionally, is the creation of a highly mobile fauna area instigated by the presence of a singular species or singular individual of a species; or is there a threshold of individuals of one or numerous species that need to be met for it to be a highly mobile fauna area?
3. The creation of a SNA should generally be established following extensive data collection and/or observations over different seasons and possibly several years to confirm the permanent or seasonal presence (or not) of a threatened and/or at-risk species.
4. The creation and establishment of an SNA and highly mobile fauna area should also account for habitat quality and suitability and the surrounding land use of the area, which determines the likely permanent or temporary establishment of highly mobile fauna. For example, short grass and bare ground areas in future urban zones (and including construction sites) are commonly used for roosting and breeding by New Zealand dotterel (Appendix 2 identifies their ecosystem as 'coastal / riverine').

In addition to the above reasons, it is currently unclear how 'specified highly mobile fauna' have been identified. More specifically, we note that it does not consider all highly mobile fauna types e.g., migratory freshwater fish, North Island brown kiwi.

There needs to be a definition of 'highly mobile fauna' and an explanation of the criteria used to determine which species qualify as 'specified highly mobile fauna'. It is also unclear why some of the species listed in Appendix 2 are identified as highly mobile fauna given that they are known to have relatively small territories.

EIANZ submit that this needs to be clearly articulated in the definitions for the avoidance of any doubt, confusion, as well as tension that may arise between property owners and local councils.

Increasing Vegetation Cover (3.22 & 3.23)

EIANZ is supportive of the policy direction to increase vegetation cover within regions however we view increasing vegetation cover as part of a broader suite of ecological 'bottom lines' needed to achieve the policy intention. Conservation objectives and targets are likely to vary from region to region with habitat creation often a lower priority compared to protecting the remaining indigenous vegetation and fauna populations.

We acknowledge the requirement for regional biodiversity strategies as a useful mechanism by which to identify and prioritise biodiversity management actions. Funding of these actions are strongly tied to regulatory drivers and EIANZ recommends that the NPS-IB identify a broader suite of 'bottom lines' nationally beyond increasing vegetation cover. These might include pest control, increase in public ownership of high-value SNAs as well as private land incentives.

Submission Point 8: Biodiversity offsetting and compensation

EIANZ acknowledges the value of, and supports the inclusion of biodiversity offsetting and compensation principles, however, would like to raise the following:

The NPS-IB presents tension between rigor and feasibility, where both rigor and feasibility may be challenging to implement. An example of this is that offsetting may be unachievable when the goal is to maintain the function of the ecosystem with continuous improvement.

Demonstration of compliance of principles in Appendix 3.3 as required may not be practicable in all scenarios. In addition to this, the specifications around "net gain" does not specify any requirement for qualitative measures, without which may be a limitation to the implementation of "like for like" in terms of ecosystem type and value.

There is also misalignment between biodiversity offsetting in the NPS-IB and the BBOP biodiversity offsetting principles and clarification is sought on the justification of these differences. For example:

1. The term 'like for like' is undefined (Appendix 3: Principle 3).

In the context of biodiversity offsetting, if the term 'like for like' is interpreted in the extreme, it could be argued that an offset can never be achieved for a particular ecosystem or habitat type. This is because habitat types include multiple features (attributes) that cannot all be replaced or in exactly the same manner and configuration. The implication is that, under an extreme interpretation, residual effects management for threatened habitat types or ecosystems would therefore default to 'compensation' and more than minor effects be automatically deemed inappropriate under principle 4.2 of the NPS-IB because they can't be 'offset'.

A guidance note or definition is needed to specify that 'like for like' relates to a particular species, species assemblage, or ecosystem type. That is, 'like for like' equates to an offset that generates benefits to the same species, species assemblage, or ecosystem type that is impacted. Guidance is also needed on the ecosystem type classification used to define 'like for like' in an ecosystem context (e.g., Singers et al. 2017 for the Auckland region) to avoid confusion or inconsistencies in application.

2. The terms 'irreplaceability' and 'vulnerability' are not defined (Appendix 3 & 4):

These terms have not been defined in New Zealand guidance and can have different meanings and include specific underlying categorisations when used internationally. Without definitions it remains unclear how to assess or interpret the 'appropriateness' of an offset or compensation in accordance with the relevant principles in both exposure drafts.

We recommend providing a definition so it is clear how the relevant principles are to be complied with or change the terms to reflect the New Zealand context, i.e., so that this principle relates directly to those adverse effects that cannot be appropriately addressed because the level of effect is too high, and outcomes associated with proposed offsetting or compensation measures are too uncertain.

3. Use of the term 'quantitative' in reference to offsetting (Appendix 3):

Quantitative offset models cannot be applied to most biodiversity values at the consenting or plan change stage of a project so are of little use in assisting to determine whether a Net Gain offset is likely

to be achieved (Baber et al. 2022). Where quantitative models can be used, they lack the necessary precision to function as an offset yardstick as per this definition.

We recommend deleting the term 'quantitative' from both relevant offset principles (NPS-FM and NPS-IB) to align with Business for Biodiversity Offsets Programme (BBOP) guidance and international practice around offsetting, in which the term ‘measurement’ relates to quantitative, qualitative, or semi-quantitative information.

Additionally, amend NPS-IB clause 3.24(f)(i) as follows: " (i) a detailed plan of what is proposed, including a quantified loss and gain calculation, the currency used in the calculation, and the data that informs the calculation and plan;’.

Weighting to offset or compensation principles (Appendix 3 & 4):

The NPS-IB wording casts the matters as criteria to be met/failed, rather than principles to be assessed in light of the evidence. The decision as to whether an offset/compensation proposal is appropriate should be left to the decision maker, depending on the specific biodiversity values in question and having considered the balance of evidence in a burden of proof framework.

We recommend redrafting by deleting the wording "*and must be complied with for an action to qualify as a biodiversity offset/compensation*." Wording should align with clause NPS-FM 3.22(3)(b). This is to better recognise that these matters are principles to be assessed in light of the evidence, rather than criteria to be met/failed. This better aligns with the NPS-FM. Also, duplicates information requirements in clause 3.24(f)and(g) which already require a description of how the offset/compensation principles have been addressed.

Concluding comments

EIANZ is grateful for the opportunity to provide feedback on the exposure draft document. We feel that earlier opportunities for practitioners to contribute to the NPS-IB might have avoided some of these issues. We hope that any future NPS or regulatory-related documents will consider seeking the input of practitioners such as members of EIANZ.

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

Yours sincerely,

Mark Bellingham

President, NZ Chapter, EIANZ

[2] M Baber and others (2021). The use of modelling for terrestrial biodiversity offsets and compensation: a suggested way forward. Resource Management Journal, April 2021.