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**REPORT 5**  
*(1215/52/IM)*

## **SUBMISSION ON PROPOSED NATIONAL POLICY STATEMENT ON INDIGENOUS BIODIVERSITY**

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### **1. Purpose of Report**

This report proposes that the Wellington City Council make a submission on the Proposed National Policy Statement on Indigenous Biodiversity.

### **2. Executive Summary**

A Proposed National Policy Statement on Indigenous Biodiversity (NPS) has been prepared and is open for consultation. Submissions close 2 May 2011.

The proposed NPS sets out the objective and policies to manage New Zealand's indigenous biological diversity under the Resource Management Act 1991 (RMA).

Officers recommend supporting the majority of the proposed NPS. The proposed NPS is consistent with the outcomes of a number of Council initiatives and will provide national policy support for future biodiversity initiatives including protection through the district plan. One of the proposed policies raises a number of issues around workability and intended outcomes and therefore, the submission suggests small changes and asks for clarification. Another if the policies introduces a new concept of "no net loss" and the ability to 'off set' losses. Officers consider that this policy needs further work. Small changes are also requested to two of the definitions.

If the proposed NPS is adopted in a form similar to that in which it is notified it will require council to identify sites that meet the criteria specified in the NPS and undertake a district plan change (or identify other such methods as may be appropriate) to protect the identified areas.

### **3. Recommendations**

Officers recommended that the Committee:

- 1. Receive the information.*

2. *Agree that the submission attached as Appendix 2 be forwarded to the Ministry for the Environment for their consideration.*
3. *Delegate to the Chief Executive and the Natural Environment Portfolio Leader the authority to make any editorial changes and any changes agreed by Committee to Council's submission.*
4. *Note that there will be financial implications for Council in its implementation as a result of the Government making the National Policy Statement on Indigenous Biodiversity operative.*

## **4. Background**

### **4.1 Biodiversity under the Resource Management Act (RMA)**

Protecting indigenous biodiversity under the RMA has been a challenge for many local authorities. Challenges include:

- areas and habitats of native species occur on private land and tensions can arise between the aspirations for development and the need for protection;
- success of any programme to maintain biodiversity relies on the goodwill and sympathetic management of private landowners where ecosystems remain;
- the distribution of remaining native vegetation and habitat types means the responsibility for maintaining biodiversity does not fall uniformly across all districts and regions;
- ecosystems are not confined to specific sites and therefore simply protecting sites with high biodiversity value does not provide the full solution to maintaining biodiversity value; and
- the cost of protecting a site is often local but the benefits are local, regional and national.

These challenges have often resulted in inadequate consideration of biodiversity in the RMA process and less than ideal district plan provisions.

### **4.2 Purpose of a National Policy Statement**

A national policy statement contains objectives and policies on matters of national significance that must be 'given effect' to in RMA planning documents and given 'particular regard' in resource consent decision making. A national policy statement is intended to be a relevant consideration to be weighed along with other considerations to achieve the sustainable management purposes of the Act.

The proposed NPS has been developed to promote a national approach to areas and habitats that are important to the maintenance of native biodiversity. It will provide direction and facilitate certainty and consistency in the way that local authorities deal with biodiversity.

The aims of the proposed NPS are stated as being to:

- Bring more clarity to local authorities' role in managing biodiversity under the RMA than may be apparent in the face of the Act itself
- Support the existing good work of local authorities and secure the gains made in regional and local plans
- Encourage local authorities that operate below best practice to enhance their efforts by introducing a 'bottom line' category of site whose values are to be recognised and protected through the RMA
- Help decision makers appropriately balance the protection of native biodiversity, the interests and values of tangata whenua, the rights and responsibilities of landowners and the broader national interests that may be at stake in future resource management decisions-making (e.g. through biodiversity off sets)

The above aims are primarily about improving the RMA policy and planning processes in order to maintain native biodiversity, within the broader statutory framework of sustainable management. The need for the NPS indicates that biodiversity is not been given the appropriate weight in the RMA process.

## **5. Discussion**

### **5.1 *The Objectives and Policies of the Proposed NPS on Indigenous Biodiversity***

The proposed NPS contains 1 objective and 8 policies. A brief description of the aims of each policy and officers' comments and recommendations are provided below. The specific policies have not been reproduced here but are provided in the Proposed NPS document attached as Appendix 1 to this report.

#### **5.1.1 Policy 1**

Policy 1 specifies that at least one measure of 'significance' (from section 6(c) of the RMA) is whether an area or habitat is important for the maintenance of biodiversity.

Officers recommend that Policy 1 is supported.

#### **5.1.2 Policy 2**

Policy 2 indicates to local authorities the priority ecosystems and environments that require protection and management in order to ensure that a full range of New Zealand biodiversity values are protected and maintained. These are:

- (a) the naturally uncommon ecosystems type listed in Schedule One (of the NPS)
- (b) indigenous vegetation or habitats associated with sand dunes
- (c) indigenous vegetation or habitats associated with wetlands
- (d) land environments, defined by Land Environment of New Zealand at Level IV (2003), that have 20 percent or less remaining in indigenous cover
- (e) habitats of threatened species and at risk species.

Wellington City contains a number of the ecosystems listed in Schedule One (such as coastal turf, shingle beaches, coastal rock stacks, marine mammal influenced sites and cloud forest) as well as Level IV Land Environments (that have 20% or less remaining in indigenous vegetation cover) as defined by Land Environment of New Zealand. The policy requires that these ecosystems be regarded as 'significant indigenous vegetation or significant habitat of indigenous fauna'

In circumstances where areas of exotic vegetation contain the habitats of threatened or at risk species the policy has the potential to require these areas to be regarded as 'significant habitats of indigenous fauna'. While in principle this concept is not opposed, the policy as it is currently written requires blanket protection of all these potential areas, and this may be an unrealistic outcome.

For example within Wellington City, Kaka (an endangered species) are spreading throughout the City and using a wide variety of native and exotic habitat. Policy 2 would imply that all indigenous and exotic ecosystems where the Kaka is found need to be considered a 'significant habitat of indigenous fauna'.

Officers consider that this outcome may be unachievable and therefore the wording of the policy should be modified to clarify that protection is only necessary for areas needed to maintain that biodiversity.

Officers recommend that this policy is supported but seek minor amendments for clarification in order to achieve a more realistic outcome. Wording to this effect are suggested in the submission and outlined below.

Amend Policy 2 as follows, or use other words to like effect (proposed new wording underlined):

*In considering the effects of any matter, local authorities shall, in addition to any area of significant natural vegetation or a significant habitat of indigenous fauna identified in, or by, provisions of any relevant regional policy statement, or regional or district plan, regard the following as significant natural vegetation or significant habitat of indigenous fauna:*

- (a) the originally rare ecosystems types listed in Schedule One;*
- (b) indigenous vegetation associated with sand dunes;*
- (c) indigenous vegetation associated with wetlands*
- (d) land environments, defined by Land Environments of New Zealand at Level Iv (2003), that have 20 percent or less remaining in indigenous vegetation cover; and*
- (e) habitats of threatened and at risk species important for the maintenance of indigenous biodiversity.*

### **5.1.3 Policy 3**

The intention of this policy is to place an obligation on the Regional Policy Statement (RPS) to include the criteria outlined in Policy 2.

The Proposed RPS for the Wellington Region was notified March 2009 and the decision was released May 2010. WCC supported the biodiversity provisions in the proposed RPS, which are generally consistent with the provisions of the proposed NPS.

Officers recommend that Policy 3 is supported.

#### **5.1.4 Policy 4**

Policy 4 directs local authorities to identify areas of significant indigenous vegetation and significant habitats of indigenous fauna listed in Policy 2 on maps and/or schedules in the district plan. The policy requires that this be done within 5 years of the NPS taking effect.

The policy provides clear direction to Councils that areas that are significant for their biodiversity value should be protected through district plan provisions.

Officers recommend that Policy 4 is supported.

#### **5.1.5 Policy 5**

Policy 5 establishes the obligation for local authorities to manage the effects of resource use to achieve 'no net loss' in biodiversity values within significant areas and habitats. Policy 5 introduces the concept of 'off-setting' into the planning process and provides opportunity for ecological enhancement and restoration activities off site.

'No net loss' is a new concept introduced by the NPS, however given the national situation of on-going biodiversity decline it is questionable that 'no net loss' is an appropriate bottom line. The concept of 'no net loss' has the potential to act as a disincentive to protect and restore indigenous biodiversity. In addition the policy does not define the geographical extent of 'no net loss' and it is currently unclear whether 'no net loss' is meant at a national, regional, district or catchment scale. Substantial monitoring would be required to be confident that 'no net loss' is achieved and few Council's will have the resources to undertake this.

While the concept of 'off setting' is not new (it has developed through Environment Court cases), its application is still developing and it is not clear whether the outcomes sought in the policy can be realistically achieved. In particular, the principles for considering a biodiversity offset in the proposed NPS is a 'like for like or better' approach. It is difficult to see how this can be achieved by replanting in circumstances where it has taken hundreds of years to create a particular ecosystem. The bottom-line significance assessment as outlined in Policy 2 of the NPS is based on national priorities for protection. If these are national priorities, and the core role of the NPS is to prevent habitat destruction it is difficult to see how any off-setting will result in their protection.

The Policy needs to be clear about the value of the offset and ensure that the quantification of that value is the same across territorial boundaries. In order to achieve consistency across territorial boundaries the NPS should specify the methodology for determining the value of the offset.

The Policy appears to require that the place of loss and the place of offset must both be within 'areas of significant vegetation or significant habitats of indigenous fauna'. However, as areas of significant vegetation or significant habitat are areas which, by their definition, have high biodiversity values there will be little scope for 'offsetting' by increasing the biodiversity values in these places. It is considered that offsetting should be able to occur outside areas of significant vegetation or significant habitats e.g. establishing ecological corridors, establishing buffer zones and securing migratory routes.

Active conservation management (replanting, pest control, reintroduction of species) is a major means of maintaining and increasing biodiversity in New Zealand and could be used as a tool to provide for offsetting in the above circumstances. The policy should explicitly provide for this.

Officers recommend that Policy 5 be significantly amended to enable further research and clarification of the potential outcomes. Overall the Policy should be more robust. Officers also recommend that the submission should indicate that any potential issues with this policy should not be used as a reason for delaying the implementation of the NPS.

Specifically the submission requests that the policy be:

- redrafted to clarify the geographical extent of 'no net loss';
- redrafted to clarify monitoring requirements and obligations to ensure that 'no net loss' is being achieved;
- redrafted to provide clear methodology to determine the value of the offset to ensure consistency across territorial authority boundaries;
- reconsidered in the context of the national priorities for protection, and perhaps applied to other areas assessed as significant by local Council's; and
- redrafted to provide for active conservation management as a mechanism to offset biodiversity.

#### **5.1.6 Policy 6**

Policy 6 promotes the protection and enhancement of biodiversity more widely (i.e. not just in identified significant areas) and recognises that biodiversity occurs across the landscape and at various scales. It recognises the importance of things such as maintaining seasonal food sources, ecological linkages, buffers around significant sites and riparian vegetation.

This approach will require the Council to think about how biodiversity values can be incorporated in a more comprehensive way into the district plan.

Officers recommend that Policy 6 is supported.

#### **5.1.7 Policy 7**

Policy 7 recognises the relationship of Maori to biodiversity and that principles from traditional Maori knowledge can be usefully applied in the management of biodiversity.

Officers recommend that Policy 7 is supported.

### **5.1.8 Policy 8**

Policy 8 reinforces the expectation already apparent in the RMA that those whose properties will be affected by a council's efforts to identify and protect biodiversity values are to be consulted early in the process.

The evaluation of this policy identifies that the requirement for consultation is already in the First Schedule of the RMA and that the policy aims simply to make the RMA obligation more explicit.

Officers recommend that Policy 8 is supported.

## **5.2 Implications for District Plan Policy**

A district plan is required to 'give effect to' a national policy statement. Council Officers responsible for Council's Biodiversity programme indicate the current district plan provisions, which involve the identification of Conservation sites (the majority of which are on public land), would not be sufficient to 'give effect to' the NPS.

A large amount of work has been done on identifying areas with biodiversity values and this work would meet the criteria of Policy 2. However, most of the identification and analysis has been undertaken on publicly owned land. Identification work on private land is limited to desk top studies identifying areas of primary and secondary forest. Field work, which would require the consent of landowners, would need to be undertaken to clarify the biodiversity values of these areas and identify other ecosystems that cannot be identified through aerial photography (e.g. wetlands).

Policy 5 (offsetting) and Policy 6 (maintenance of biodiversity values outside identified areas of significant indigenous vegetation and significant habitats of indigenous fauna) are also concepts that would need to be incorporated through objectives, policies, rules and methods in the District Plan.

The above work could be incorporated into the district plan through the plan change process (as part of the rolling review of the district plan) or as part of a comprehensive review. Regardless of how it is included in the district plan consultation with landowners, the public and tangata whenua will be a large part of any project and essential before the outcomes of any work can be included into the district plan. The development of relevant district plan provisions would require allocation of budgets and reprioritisation of other plan changes.

## **5.3 Consultation and Engagement**

Consultation with Council Officers responsible for biodiversity and the Open Space Strategy has been undertaken. They have provided feedback on the proposed NPS policies and had input into Council's submission where appropriate.

## **5.4 Financial Considerations**

There are no specific financial considerations in making a submission on the proposed NPS.

However the RMA requires that district plans 'give effect' to the contents of National Policy Statements. Policy 4 of the proposed NPS requires that as a minimum, the ecosystems and habitats specified in Policy 2 are incorporated into the District Plan within 5 years of the NPS becoming operative.

It is anticipated that a specific district plan project in conjunction with Parks and Garden staff would be required to implement the requirements of the proposed NPS. The outcome of such a project would be a district plan change.

The need for a plan change would have financial and resourcing implications over three to four years. The project would require research, field work and GIS mapping; stakeholder/landowner and public consultation on potential sites and possible management frameworks; and the preparation of a plan change. This could not be achieved within existing resources, budgets and agreed priorities.

### **5.5 Climate Change Impacts and Considerations**

There are no specific climate change impacts or considerations required by this submission.

### **5.6 Long-Term Council Community Plan Considerations**

The submission on the proposed NPS is consistent with the LTTCP and Council's Long Term Outcomes on the Environment and Stronger Sense of Place strategies.

In particular, the submission and the resulting work required by the NPS supports the outcomes that 'Wellington will protect and showcase its natural landforms and indigenous ecosystems' and that 'Wellington will recognise and protect significant features of its coastal and terrestrial landscape and natural heritage'.

## **6. Conclusion**

The proposed NPS on Indigenous Biodiversity provides clear direction from central government that biodiversity values need to be taken into consideration in all resource management decisions and policy making.

Officers recommend that the Council supports the proposed NPS and the proposed submission is attached in Appendix 2. The NPS will provide important validation of work already being undertaken within Council to maintain biodiversity values within Wellington City. However, to fully 'give effect' to the NPS additional work will need to be undertaken and it is anticipated that such a project would take approximately three to four years.

Contact Officer: *Alison Newbald, Senior Policy Advisor, District Plan*



## Supporting Information

### **1) Strategic Fit / Strategic Outcome**

*The comments in the submission supports Council's overall vision of Creative Wellington – Innovation Capital and in particular the Urban Development and Environment outcomes promoting a more sustainable and liveable city.*

### **2) LTCCP/Annual Plan reference and long term financial impact**

*The submission relates principally to the Planning Policy Project (C533) under the LTCCP. Funding implications are likely to arise over time as the Council is required to give effect to the National Policy Statement on Indigenous Biodiversity through the District Plan and other planning and Council processes.*

### **3) Treaty of Waitangi considerations**

*All matters under the Resource Management Act 1991 are required to take account of treaty of Waitangi considerations as prescribed in section 8 of the Act.*

### **4) Decision-Making**

*The report sets out Councils submission on the Proposed National Policy Statement on Indigenous Biodiversity, which is consistent with existing Council policy. Supporting the National Policy Statement will require decisions to be made in the future about how to implement the NPS.*

### **5) Consultation**

#### **a) General Consultation**

*All relevant directorates within the Council were consulted on the development of the submission on the proposed National Policy Statement for Indigenous Biodiversity.*

#### **b) Consultation with Maori**

*No specific consultation has been undertaken.*

### **6) Legal Implications**

*There are no legal implications.*

### **7) Consistency with existing policy**

*WCC submission has been drafted to ensure consistency with existing Council Policy.*

## **APPENDIX 1**