SUBMISSION ON EXPOSURE DRAFT NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY AND SUPPORTING DRAFT IMPLEMENTATION PLAN

SUBMITTER DETAILS

FULL NAME:	Royal Forest and Bird Protection Society of New Zealand Incorporated
ADDRESS FOR SERVICE:	PO Box 631, Wellington, 6140
CONTACT:	Erika Toleman/Peter Anderson
TELEPHONE:	021988315/0212866992
EMAIL:	e.toleman@forestandbird.org.nz p.anderson@forestandbird.org.nz
DATE:	21 July 2022

1. ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INC

1.1 The Royal Forest and Bird Protection Society of New Zealand Inc (Forest & Bird) has been Aotearoa New Zealand's independent voice for nature since 1923. Forest & Bird's constitutional purpose is:

> To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.

1.2 Forest & Bird was also represented on the Biodiversity Collaborative Group (BCG) that prepared the draft instrument used as the foundation for the Exposure Draft National Policy Statement for Indigenous Biodiversity (exposure NPSIB).

1.3 It is a key participant in district and regional planning and consenting decisions relating to indigenous biodiversity across New Zealand. It is a staunch defender of RMA requirements to sustain the life-supporting capacity of ecosystems, maintain biodiversity and protect significant indigenous vegetation and significant habitat of indigenous fauna.

1.4 In addition, it has over 100,000 members and supporters who are passionate about enhancing, restoring and protecting nature in rural and urban areas throughout the

country. Examples of current and former projects include many decades of Kapiti Island revegetation, "Ark in the Park" open sanctuary project in the Waitakere Ranges in partnership with Auckland Council, and restoration of at risk ecosystems such as saltmarsh along the banks of the Heathcote/Opawaho river in Christchurch.

2. CONTEXT

Current state of indigenous biodiversity

2.1 Across the globe, biodiversity is being lost at an unprecedent rate in the history of mankind. Approximately 75% of terrestrial environments have been "severely altered" by human actions. Around 85% of wetlands have been lost since the 1700s. Up to 1 million species are threatened with extinction, some in the next few decades.[1]

2.2 Aotearoa New Zealand is no exception to this global picture.

2.3 Land use change is occurring at speed, putting pressure on Aotearoa New Zealand's unique ecosystems and species, resulting in degradation or loss.[2] This is primarily due to the failure of the Resource Management Act 1991 (RMA) and other legislation to control three intertwined drivers: loss, fragmentation, and degradation (collectively 'habitat transformation').[3]

2.4 For example:

- 4,000 of our indigenous species are endangered.[4]
- Approximately 90% of wetlands have been lost since pre-human times, due to draining, ploughing, or burning[5]. Of the 10% that remain, 60% are in a severely degraded state.[6]
- More than 80% of Aotearoa New Zealand was covered with indigenous forest before human arrival. In 2018 this was reduced to 27%.[7]

2.5 The additional challenge that Aotearoa New Zealand has to grapple with, and additional loss it faces if this scenario does not change, is that millions of years of geographic isolation before humans arrived have resulted in a vast assemblage of plants and creatures found nowhere else on earth. This means that if we lose these species here, they are lost globally, forever. The unique nature of our indigenous biodiversity also makes it especially poorly suited to replacement once lost. For example, Aotearoa New Zealand has an

[1] https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/#:~:text=The%20Report%20finds%20that%20around,20%25%2C%20mostly%20since%201900.
[2] Environment Aotearoa 2022 'Pohutukawa', referring to Macinnis-Ng et al, 2021).
[3] Environment Aotearoa 2020 'Pohutukawa'.
[4] Environment Aotearoa 2022 'Pohutukawa', relying to NZTCS.
[5] Environment Aotearoa 2022 'Pohutukawa' referring to Dymond et al, 2021.
[6] Environment Aotearoa 2022 'Pohutukawa' referring to Ausseil et al, 2011.
[7] Environment Aotearoa 2022 'Pohutukawa', referring to Banks-Leite et al. 2020.

unusually high proportion of indigenous fauna with low mobility (e.g., flightless insects or birds) that are slow to spread to new habitat.

2.6 These ecological attributes of our indigenous biodiversity must be factored into how adverse effects on indigenous biological diversity are managed. If they are not, the effects management system adopted will not be effective, and indigenous biodiversity will continue to decline. We cannot simply adopt approaches used overseas; our approach to managing indigenous biodiversity must be unique, just as our indigenous biodiversity is.

Government obligations relating to indigenous biodiversity

National

2.7 Maintenance of indigenous biodiversity is a statutory obligation placed on local authorities under the RMA[8].

2.8 This obligation reflects higher level direction in Part 2 RMA to:

- have particular regard to the finite characteristics of the environment and to maintenance and enhancement of the environment;[9]
- recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (SNA) as a matter of national importance;[10] and
- to, in simple terms, undertake human activity at the same time as "safeguarding the life supporting capacity of ecosystems".[11]

2.9 Maintaining indigenous biodiversity, protecting SNAs, and safeguarding the life supporting capacity of ecosystems is not only imperative for preventing harm to and extinction of indigenous biodiversity in and of itself.[12] These are also essential actions for providing for the social, economic, and cultural well-being, and health and safety, of people and communities more broadly, which is also part of the RMA's purpose. This because of the ecosystem services provided to humans by indigenous biodiversity.

2.10 Our indigenous trees provide oxygen, temperature regulation, shade, food, and erosion provision. Healthy soil ecosystems are essential for successful primary production. Indigenous forests act as carbon sinks. Wetlands provide essential filtration services[13]. We need freshwater to drink. These ecosystem services, and so the presence of healthy, wide-

[8] ss 30 and 31 RMA. In *Property Rights in New Zealand Inc v Manawatu-Wanganui RC* [2012] NZHC 1272 the High Court confirmed s 30(1)(ga) places a mandatory obligation for regional councils to include objectives policies and methods to achieve maintenance of indigenous biodiversity.
[9] s 7 RMA.
[10] s 6 RMA.
[11] s 5 RMA.
[12] I.e., for its intrinsic value, being the value of ecosystems by their own right, independent of the benefits they provide humans: Conner & Kenter, 2019.
[13] See Ecosystem Services in New Zealand, Manaaki Whenua Landcare Research, Dymond J (Ed.).

spread indigenous biodiversity and ecosystems, are equally important in urban areas as in rural areas.[14]

2.11 A key barrier to successful implementation of environmental protections like those in place to maintain indigenous biodiversity that was identified during the Resource Management Law Association's Implementation Roadshow, was the lack of understanding by people and communities for how "ecological limits support people's daily lives and about the implications of their actions individually and in combination with others"[15]. "We need to create a culture of people connected with place and with the environment" if regulation is going to be successful.[16] This suggests that educating people about ecosystem services is a critical component of successful implementation of the exposure NPSIB. It is not an implementation action currently identified in the draft implementation plan or supporting pilots.

International

2.12 Aotearoa New Zealand is also subject to international obligations relating to indigenous biodiversity.

2.13 It is a signatory to the Convention on Biological Diversity (CBD) which has three main goals:[17]

- conservation of biodiversity;
- sustainable use of biodiversity; and
- fair and equitable sharing of the benefits arising from the use of genetic resources.

2.14 Contracting parties have undertaken to develop national strategies, plans, or programmes for the conservation and sustainable use of biological diversity and which integrate conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.[18]

2.15 Gazettal of a National Policy Statement on Indigenous Biological Diversity providing clear and directive national direction on how to manage the adverse effects of human activities, and to approach restoring our indigenous ecosystems, is necessary to achieve these outcomes in Aotearoa New Zealand.

2.16 Aotearoa New Zealand is also a signatory to the RAMSAR Convention on wetlands. RAMSAR provides for the protection of wetlands of international importance and the "wise use" of all wetlands. "Wise use" of wetlands is "the maintenance of their ecological

[14] Ibid Chapter 1.8 Ecosystem Services in New Zealand Cities; Brown M et al, Vanishing Nature: facing New Zealand's biodiversity crisis, 2015 pg. 4.
[15] Garvan N, Wright M, RMLA Implementation Road Show Report 2020, pg. 8.
[16] Ibid.
[17] CBD Article 1 objectives
[18] CBD Article 6.

character, achieved through the implementation of ecosystem approaches, within the context of sustainable development", where "ecological character" is "the combination of the ecosystems components, processes and benefits/services that characterise the wetland at a given point in time."[19]

2.17 It is clear that the approach in Aotearoa New Zealand to managing the adverse effects of human activities on wetlands is severely lacking and needs to change if we are to retain any of our wetland ecosystems. This change can be achieved through the exposure NPSIB or through national direction relating to freshwater ecosystems, but it must happen. Forest & Bird is one of two National CEPA Focal Points assigned to help coordinate national implementation of RAMSAR. Its view is that currently the exposure NPSIB and our national direction relating to freshwater ecosystems, are inadequate.

Alignment with existing and future instruments

National direction relating to freshwater

2.18 Changes to the National Policy Statement for Freshwater Management 2020 (NPSFM) and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NESFW) are also currently being prepared by MFE. Forest & Bird has lodged a detailed submission on those changes. Where there is overlap between those instruments and the exposure NPSIB, this is addressed as part of Forest & Bird's detailed submission below. However, at a high-level it is noted that currently there are several areas where those instruments and the exposure NPSIB do not align. If this is not fixed it is likely to undermine successful implementation across the board, and risks resulting in a 'management gap' on the ground. Specifically:

a. The extent to which the exposure NPSIB applies to freshwater and waterbodies is not clear. This is because the exposure NPSIB states that it does not apply to "aquatic indigenous biodiversity" but does not define what this is. The NPSFM and NESFW similarly offer no definition, nor does the RMA. This means it is not clear what the exposure NPSIB does and does not apply to. If this is not remedied it risks excluding from the ambit of any national direction indigenous species that spend part of their time out of freshwater and part of their time in freshwater, with the potential for significant adverse effects.

b. The protection afforded to wetlands that are within terrestrial SNAs is inconsistent with the protection afforded to the SNA. Indigenous ecosystems do not occur in isolation. Often, they overlap or 'run' into each other. Currently the exposure NPSIB provides a more stringent effects management regime for new activities impacting terrestrial SNAs than is provided for wetlands under the NPSFM.[20] This does not reflect the dire state of Aotearoa New Zealand's wetland ecosystems or our

[19] A definition of the "wise use" concept was adopted by COP 3(1987) and an updated definition was adopted at COP 9 (2005).
[20] With broader exceptions to environmental bottom lines under the NPSFM applying to wetlands than applying to SNAS under the exposure NPSIB.

international obligations regarding wetlands and will result in poorly integrated and complex management. This needs to be fixed. Wetlands should be subject to stringent protection particularly where they are within a broader SNA.

c. The exposure NPSIB includes a specific clause for managing the adverse effects of maintenance of "improved pasture" on indigenous vegetation. This is a critical clause and is essential for both protecting some of Aotearoa New Zealand's most unique and threatened indigenous flora and fauna[21], and for providing certainty to farmers in these areas about improved pasture management. MFE has simultaneously deleted the concept of "improved pasture" from the NPSFM. This creates a lack of alignment between the two instruments, and potential confusion over why the concept is used in one instrument but not the other. It also creates issues with the scope of the exception the NPSFM is intended to provide for "existing pastoral land use" as discussed in Forest & Bird's submission on the NPSFM and NESFW, and that of RMLA.

Resource management reform

2.19 The Government is currently in the process of reforming Aotearoa New Zealand's resource management system. This will see repeal of the RMA. Although the intent is that existing national direction will be 'pulled into' the new system, it will nevertheless sit within a different statutory framework, which, based on the Select Committee version of the Natural and Built Environments Bill (NBEA), will have a different purpose, different environmental objectives, and a different structure of local planning instruments.

2.20 To support an effective and efficient transition, it is essential that the exposure NPSIB is prepared with this in mind and that the ability for the direction it provides to transfer into the new resource management system is maximised.

2.21 It appears that three key areas for achieving this are:

- The setting of biophysical limits that set either a minimum biophysical state for different indigenous species and/or ecosystems, or the maximum about of harm or stress that may be permitted.[22]

- Ensuring that preparation and content of regional biodiversity strategies aligns with preparation and content of regional spatial strategies.

- Ensuring SNAs are transferable to a new resource management system.

2.22 First, the exposure NPSIB includes limits on the types of adverse effects allowed on SNAs, and controls effects outside these areas. However, the strong focus on limits in the NBEA suggests:

[21] See https://mackenziebasin.govt.nz/mackenzie-basin/
[22] Select Committee NBEA cl 12D.

- MFE will need to consider the extent of any exceptions to these limits; and

- The limits to when biodiversity offsetting and biodiversity compensation are available should be included in the key clauses relating to effects management, so that their role as limits is unambiguous (see discussion at cl 1.5 below).

2.23 Secondly, there is clear overlap between regional biodiversity strategies and regional spatial plans in terms of their regional strategic approach and the requirement for the final product to be visual.

2.24 Preparation of regional biodiversity strategies is likely to be time consuming, and they may, for example, have less of a focus on matters like climate change adaptation than regional spatial strategies. The timing for preparing regional biodiversity strategies is long, with regional councils only having to have started their preparation within 10years of commencement. This means that many councils may be preparing them at the same time as regional spatial strategies. Careful thought needs to go into how these two instruments can be wrapped together in such a way that the detail of regional biodiversity strategies is not lost, but rather incorporated into and built on by regional spatial strategies. This may be better suited to be included in the new Spatial Planning Act, but it needs to be addressed.

2.25 From an implementation perspective, a plethora of disconnected, un-interactive plans was also identified during the RMLA Implementation Road Show as a major barrier to successful resource management implementation.[23] The solution that emerged was an accessible plan that is visual and interactive. A plan that allows people to see the current state and long-term vision for their region, including extent of indigenous cover, losses and gains over time, and the location and impacts of activities. Both regional spatial strategies and regional biodiversity strategies are geared towards addressing this barrier. To achieve this in practice they need to be aligned or pulled together, to provide one, strategic regional picture.

2.26 Thirdly, the Select Committee deleted the environmental outcome from the NBEA relating to areas of significant indigenous vegetation and significant habitats of indigenous fauna.[24] This was replaced with a broader objective to protect or restore the health, mana, and mauri of indigenous biodiversity.[25] The significant values of SNAs would mean that their identification and protection would be consistent with this broader outcome, but thought needs to be given as to whether this signals a move away from their use under a new resource management system. Forest & Bird would approach a move away from SNAs with caution. Although they have been controversial, they are beginning to gain traction and a better understanding of their importance is beginning to develop. They have been or are in the process of being identified across the country. A change in approach would need to make sure it can utilise, not waste, this work. It is noted that

[23] Garvan N, Wright M RMLA Implementation Road Show Report 2020, pgs. 1 and 7.
[24] Select Committee NBEA pg. 13.
[25] Ibid pg. 14 cl 13A.

there are other ways of identifying and classifying indigenous biodiversity for different levels of protection. This is a matter Manaaki Whenua Landcare Research has been giving some thought and it would likely be the best port of call for MFE on this issue.

The biodiversity collaborative group

2.27 The BCG was a stake-holder lead group established in 2017. It was tasked with preparing a draft national policy statement and complementary measures to support its implementation 'on the ground' and maintain indigenous biodiversity.

2.28 The core members of the BCG were EDS, Forest & Bird, Federated Farmers Inc, New Zealand Forestry Association, a representative of the Iwi Chairs Forum through the Pou Taiao Advisors Group, and representatives from infrastructure industries. Local government representatives participated as active observers, contributing to discussion and debate but not engaging in substantive decision-making or drafting.

2.29 Forest & Bird put a huge about of time and effort into the BCG process, particularly so as one of its only Trustee members. Trade-offs were made by all members in order to reach agreement. In this way the BCG version of the NPSIB is a package; all provisions work together and are essential for member support. For Forest & Bird, having maintenance of indigenous biodiversity as the clear and uncompromised purpose of the NPSIB, the limits to adverse effects on SNAs, the limits to when biodiversity offsetting and biodiversity compensation, and controlling cumulative effects outside SNAs, were essential aspects of the BCG version of the national policy statement, and essential for its agreement to the instrument as a whole. The only one of these not agreed by the BCG were the exceptions to the requirement to avoid specified adverse effects on SNAs.

2.30 The exposure NPSIB has made significant changes to all three of these aspects, while simultaneously increasing opportunity to adversely affect Aotearoa New Zealand's most significant, rare, and threatened indigenous biodiversity. Forest & Bird has recommended changes to address this cross-cutting reduction in the protection in exposure NPSIB. At a high level, key changes made by Forest and Bird are:

- Amendments to the objective to simply refer to maintenance of indigenous biodiversity. As drafted, the objective introduces the potential to argue that it allows for maintenance of indigenous biodiversity to be set aside if it is purportedly in conflict with social, economic, or cultural considerations.

- Amendments to ensure that the definition of SNA captures areas identified using the criteria in Appendix 1 until mapping in accordance with cl 3.9 become operative. This is necessary to prevent a clearance 'gold rush'. There is a very high risk of this happening, particularly in areas where people know where SNAs are, but the local authority has not mapped them in a planning document because of political or community opposition.

- Reinstatement of the 'High' and 'Medium' SNA classifications, and the graded approach to managing adverse effects as between these two areas. High SNAs capture Aotearoa New Zealand's most threatened and rare indigenous biodiversity. The current state of indigenous biodiversity, and the immense challenges with recreating Aotearoa New Zealand's indigenous biodiversity if it is lost, support adoption of a strict approach to protection.

- Moving the limits to biodiversity offsetting and biodiversity compensation to form part of the definition of the 'effects management hierarchy'. This is essential if they are to be applied as limits in practice, and to ensure clarity and certainty. This becomes even more important if the High / Medium SNA classification is not reinstated because in that situation the limits to biodiversity offsetting and compensation become the underlying biophysical limits applying to a broad spectrum of activities with significant potential adverse impacts.

- Amendment to the clause relating to control of activities outside SNAs to expressly refer to, and require local authorities to control, cumulative adverse effects. Maintenance of indigenous biodiversity requires management of adverse effects outside SNAs. The RMA has been particularly poor at controlling cumulative adverse effects; the 'death by a thousand cuts' conundrum. Express direction to local authorities is necessary to ensure cumulative effects are considered and addressed in planning documents.

- Amendments to provide clarity to local authorities, tangata whenua, and communities about how indigenous biodiversity is to be managed on Māori Land, to reduce the extent of conflict at the local level.

3. SUBMISSION STRUCTURE

3.1 This submission addresses the exposure NPSIB. Detailed submissions on each clause are provided in Section 4. A summary of key issues is provided in the paragraph above. Comments on the draft implementation plan and the implementation pilots are provided in the context of the relevant exposure NPSIB clause(s).

3.2 This submission suggests a number of amendments to the exposure NPSIB. A track-change version of the exposure NPSIB with the amendments sought included can be provided if that would be of assistance. Where a clause, or part of a clause is not expressly addressed in the relief column of the table below, then it is sought to be retained.

4. DETAILED SUBMISSION ON EXPOSURE NPSIB

Cl	Position	Discussion	Relief
Part 1			
1.1	Needs amendment	Clause 1.1 is outdated – it refers to 2021.	Amend to refer to 2022 (or year in which it is gazetted).
1.2	Support		
1.3	Needs amendment	<u>Domains</u> The application clause is unclear for a number of reasons: 1. Excluding application of the exposure NPSIB to "indigenous biodiversity in the coastal marine area" raises the question about whether it applies to indigenous biodiversity that spends part of its lifecycle inside the coastal marine area and part outside the coastal marine area. 2. The application of the exposure NPSIB to indigenous biodiversity in freshwater is not clear. This is because cl 1.3 says that the exposure NPSIB does not apply to "aquatic indigenous biodiversity" but does not define "aquatic indigenous biodiversity". The exposure NPSIB then also confusingly uses alternative terms in cl 3.19, stating that "no aquatic species or populations in water bodies" can be determined to be taonga under that clause.	Amend cl 1.3 as follows: <u>Domains</u> "(1) This National Policy Statement applies to the terrestrial environment[27]. It does not apply to the coastal marine area or to freshwater and water bodies." <u>Wetlands</u> (2)(c) provisions relating to restoration extend to include wetlands (see clauses 3.2.1 and 3.22), <u>and provisions relating to managing effects in SNAs apply</u>

[27] See also proposed amendments to definition of "terrestrial environment".

		There is also no definition of the "aquatic indigenous biodiversity" in the NPSFM, or in the RMA itself. Although, "aquatic life" is defined by the RMA in accordance with the Fisheries Act 1996 to mean "any species of plant or animal life that, at any stage of its life history, must inhabit water, whether living or dead; and includes seabirds (whether or not in the aquatic environment"). 3. Cl 1.3(2) uses multiple terms to extend or 'clarify' the scope of the exposure NPSIB that are either different to those in cl 1.3(1) when they do not need to be or are different as between cl 1.3(2)'s different sub-clauses. As regards freshwater, the scope of application of the exposure NPSIB needs to align with that of the NPSFM to achieve clear, integrated national direction, and to avoid a policy gap resulting in some indigenous biodiversity receiving no protection. The NPSFM is narrowly focused. It "applies to all freshwater and, to the extent they are affected by freshwater, to receiving environments". Freshwater is defined in s 2 RMA as "all water except coastal water and geothermal water". The NPSFM therefore does not fully protect indigenous biodiversity, or habitats of indigenous biodiversity, if the indigenous biodiversity spends part of its lifecycle outside of freshwater (e.g., it does not cover the habitat of galaxiidae that birth on the forest floor, or river birds that have habitat outside of the river). The exposure NPSIB needs to fill this gap otherwise this important indigenous biodiversity will not be adequately protected.	<u>to wetlands where the wetland is within a SNA.</u> Note: Please refer to Forest & Bird's submission on the NPSFM for more detail on wetlands. Nothing in this submission should be interpreted to change the relief sought in that submission in relation to the NPSFM or NESFW.

		At present, it appears that the exposure NPSIB fails to do so or could be interpreted in such a way that it fails to do so. Specifically, if the term "aquatic indigenous biodiversity" is interpreted along the lines of the term "aquatic life" in the RMA, and so to capture any species that at any part of its life lives in freshwater, then this species would be excluded from the exposure NPSIB, and so neither it, nor its land-based habitat would receive protection under the exposure NPSIB. The species to the extent it lives out of freshwater, and its land-based habitat, would also have no protection under the NPSFM. This cannot be intended. The solution is straightforward. It is clearest to define the application of the exposure NPSIB by reference to physical area, as opposed to indigenous biodiversity itself. This avoids uncertainty over its application to indigenous biodiversity that exists between different domains; indigenous biodiversity of that nature would be subject to protections under both the exposure NPSIB and the NZCPS or the NPSFM. This is the approach used in the NZCPS which applies to the "coastal environment" and in the NPSFM. It appears this is also the intent behind the exposure NPSIB, with cl 1.3(2) referring specifically to water bodies. A water body is defined by the RMA to mean "fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area". <u>Wetlands</u> The exposure NPSIB does not apply to wetlands except as relates to restoration. Rather, wetlands are managed under the NPSFM. This creates a number of issues because of the approach provided for in the current exposure draft of the NPSFM:	

		1. A wetland within a wider terrestrial SNA would be managed in a different, and potentially more lenient way than the terrestrial SNA. Wetlands are some of Aotearoa New Zealand's most threatened ecosystems, their protection is a matter of national importance under both ss 6(a) and (c) RMA. These features, and the rarity of wetlands, mean that nearly all, if not all, wetlands would be classified as SNAs under the exposure NPSIB's SNA Appendix 1 criteria. Wetlands should be subject to stringent, clear bottom lines. The BCG unanimously agreed that the perilous state of wetlands and the important ecosystem services they provide, meant wetlands should be subject to directive and strong protection, such that the loss or degradation of any wetland or part of any wetland should be avoided.[26] A split management between wetlands and SNAs where they overlap also creates management complexities. 2. MFE has indicated that local authorities should include provisions in plans protecting wetlands that do not meet the definition of "natural wetland" in the NPSFM. Cl 1.3 means that the direction in the exposure NPSIB also does not apply to these wetlands. It is questionable whether it is efficient or reasonable to expect that plans will also identify and control activities in wetlands that do not fall to be protected under either the NPSFM or the exposure NPSIB. This gap could and should be filled by either the NPSFM or the exposure NPSIB. Forest & Bird has suggested amendments to achieve this, at least partially, in its submission on the NPSFM. If that approach is not adopted, MFE will need to prepare an alternative.	

[26] BCG Report pg. 43-44, 65.

1.4	Needs amendment	Cl 1.4 (1): As written cl 1.4 says the exposure NPSIB applies in the "terrestrial coastal environment". The term terrestrial coastal environment is not defined. It is not defined in the NZCPS. Cl 1.3 already confirms that the exposure NSPIB does not apply within the coastal marine area. Cl 1.4 should use the same language for consistency and to avoid confusion over undefined terms. Cl 1.4(1) also refers only to the "New Zealand Coastal Policy Statement". It does not specify, as cl 1.4(2) does, that it applies to the existing 2010 version and any subsequent versions. It should. Cl 1.4(2): The NZCPS already provides effective protection for coastal and marine indigenous biodiversity through Policy 11 NZCPS, and through Policies 13 and 15 as an aspect of natural character and landscape. It is critical that the contribution these policies make to maintaining indigenous biodiversity is not compromised. The BCG held the same view (pg. 14 BCG Report).	Amend as follows: "(1) Both the New Zealand Coastal Policy Statement 2010 (or any later New Zealand Coastal Policy Statement issued under the Act), and this National Policy Statement apply in the coastal environment outside the coastal marine area."
1.5			
Te Rito o te Harakeke	Needs amendment	Te Rito o te Harakeke is supported in principle. It recognises the reciprocity of the human-nature relationship, rather than viewing the natural environment and social or economic outcomes as opposites to be weighed against each other. It also does this is a way that recognises the additional whakapapa aspect of the human-nature relationship for Māori. Te Rito o te Harakeke also recognises the interconnected relationship between terrestrial indigenous biodiversity and the wider environment. However, the way in which Te Rito o te Harakeke has been amended means that it risks being interpreted to introducing a balancing of human use against maintenance of indigenous biodiversity. This was not the intention of the BCG.	Amend as follows: • Replace "elements" in para 3 to refer to "principles" consistent with the approach in the NPSFM. • Insert a new para underneath the principles as follows, and consistent with the

		Its version of the concept was carefully drafted to put maintenance of indigenous biodiversity first, on the basis this was essential for human wellbeing of all types: "Upholding Hutia Te Rito acknowledges and protects the mauri (life force) of our indigenous biodiversity. This requires that in using the natural environment and its resources and providing for te hauora o te tangata (the health of the people), we have a responsibility to provide for te hauora o te koiora (the health of indigenous biodiversity), te hauora o nga taonga (the health of taonga species and ecosystems), and te hauora o te Taiao (the health of the wider environment). Resource use and development which degrades the mauri and hauora of our indigenous biodiversity will also degrade the hauora of our people." The exposure NPSIB's balancing approach also conflicts with that of Te Mana o Te Wai in the NPSFM. There is no clear reason for a different approach. Te Mana o Te Wai expressly contains a hierarchy of obligations, with the first being the health and well-being of water bodies and freshwater ecosystems. Te Rito o Te Harakeke should include a similarly clear hierarchy of obligations, consistent with the statutory obligations underpinning the exposure NPSIB set out in Section 2 above.	approach in the NPSFM: "There is a hierarchy of obligations in Te Rito o te Harakeke that prioritises: (a) First, te hauora o nga koiora (the health of indigenous biodiversity), recognising the connections between this and: (i) Te hauora o te taonga (the health of taonga); and (ii) Te hauora o te Taiao (the health of the wider natural environment): (b) Second, the ability for people and communities to use natural and physical resources to provide for their social, economic, and cultural

			well-being, now and in the future.
Maintenance of indigenous biodiversity	Needs amendment	Maintaining indigenous biodiversity is the obligation on local authorities that underpins the exposure NPSIB (ss 31 and 31 RMA). It is the outcome the exposure NPSIB is directed at achieving. Defining what it means and requires is critical for ensuring management actions are properly focused and are consistent across the country. There are, however, some issues with how the concept is framed in the exposure NPSIB: 1. Para (c): the term "properties" is not defined. This is not clear, and particularly so given the number of ecological terms that are defined which raises the question about precisely what this term captures that the other terms do not. 2. Para (c): this para then refers to "the functions of ecosystems". The defined term is "ecosystem function", so this should be used. The term "ecosystem function" is itself unclear, specifically the meaning of the term "flows". This definition appears to be an abbreviation of the definition of ecosystem processes used in the *Critical factors* report[28], commissioned by the BCG. Without this additional detail the definition is unclear. 3. It is ecologically agreed that maintaining indigenous biodiversity will require restoration and enhancement. This is because once indigenous	Amend as follows: • Insert definition of "properties of ecosystems and habitats". It is suggested that Manaaki Whenua is asked for advice on this as it prepared the *Critical factors* report on which the concept is based. • Amend definition of ecosystem function to comprise full definition from *Critical factors* report:[30] "abiotic (physical) and biotic (biological) flows that are properties of an ecosystem, including the water cycle, nutrient cycling (including decomposition, plant nutrient uptake, microbial

[28] Walker et al, *Critical factors to maintain biodiversity: what effects must be avoided, remedied, or mitigated to halt biodiversity loss?* LC3116, May 2018.
[30] At pg. 41.

		vegetation cover drops below a certain percentage threshold severe further decline is likely even without direct physical effects from activities like clearance.[29] This was recognised in the BCG's version of this concept and was agreed by all BCG members. The idea of a fundamental concept is to introduce broader, more dynamic ideas into the definition. The role of restoration and enhancement in maintaining indigenous biodiversity should be inserted. This also provides a 'policy link' between the fundamental concept and the exposure NPSIB's restoration clauses.	respiration, nitrification, denitrification), energy flow (photosynthesis, respiration, primary production), community dynamics (including population processes such as migration, dispersal, pollination, herbivory, population dynamics, predator–prey dynamics, competition, predation, succession, source–sink dynamics), and natural selection." • Amend (c) to read: "ecosystem function and the properties of ecosystems and habitats". • Insert a new line after (f) stating: "The maintenance of indigenous biodiversity may also require the restoration

[29] This is the concept underpinning the threatened land environments framework, which has three different categories beginning at a 30% cover threshold. It is at this threshold that decline is likely to begin Walker S, Price R, Rutledge D, *New Zealand's remaining indigenous cover: recent changes and biodiversity protection needed,* S Walker, PLC0405/038, March 2005 pg. 13.

			or enhancement of some ecosystems and habitats".[31]
Effects management hierarchy	Needs amendment	<u>Minimise</u> The effects management hierarchy has been amended to require (in simplified form) avoidance, followed by minimisation, followed by remediation, followed by offsetting, followed by compensation. This sees the removal of the term "mitigated" and its replacement with "minimised". The term mitigation comes directly from s 5 RMA. There is extensive jurisprudence on what it means and how it sits within the RMA's system alongside avoidance and remediation for managing adverse effects of activities. Conversely, the term "minimise" is not in s 5 RMA. It is not therefore commonly used in effects management hierarchy provisions in plans (although is in some generally alongside a requirement to avoid, remedy, mitigate). This raises a question of the *vires* of substituting mitigate for minimise. Continued use of mitigate, alongside avoidance and remediation, will preserve case law and knowledge as to their meaning. It will also avoid the litigation to determine the meaning of minimise that will inevitably kick off on gazettal of the exposure NPSIB if it is retained. The term 'minimise' or minimisation of effects refers to what effects management should achieve, rather than being an effects management step itself. <u>Limits to biodiversity offsetting and biodiversity compensation</u>	Amend as follows:[37] (4) **Effects management hierarchy** The effects management hierarchy is an approach to managing the adverse effects of an activity. It requires that: (a) adverse effects are avoided where practicable; and (b) where adverse effects cannot be demonstrably avoided, they are ~~minimised~~ <u>remedied</u> where practicable; and (c) where adverse effects cannot be demonstrably ~~minimised~~ <u>remedied</u>, they are ~~remedied~~ <u>mitigated</u> where practicable; and

[31] It is noted that this phrase says that maintenance of indigenous biodiversity "may" require restoration or enhancement. This is because this is the phraseology agreed to by the BCG. However, the scientific papers referred to in this submission confirm that it "will" require restoration or enhancement. Therefore "will" is more accurate and would also be supported.

[37] Changes to where the phrase "more than minor residual adverse effects" is located in the concept have been made to improve clarity.

		Forest & Bird's primary position is that biodiversity compensation should not be part of the effects management hierarchy, because it is inherently uncertain as to whether it will maintain indigenous biodiversity. See the discussion on this matter at Appendix 4 below. *Included in the effects management hierarchy* The effects management hierarchy allows for biodiversity compensation where biodiversity offsetting is "not demonstrably possible", and then allows for biodiversity compensation unless it "is not appropriate". In that circumstance "the activity itself is avoided". The principles of biodiversity offsetting and biodiversity compensation in Appendices 3 and 4 represent standards "that must be complied with" for an action to qualify as an offset or compensation. Both, not just biodiversity compensation as the effects management hierarchy concept implies, include a principle headed "When [biodiversity offsetting/biodiversity compensation] is not appropriate". The situations where offsetting of compensation is said to be inappropriate are the same. These situations comprise limits on when offsetting and compensation are available. This is an essential part of the effects management approach in the exposure NPSIB and should not only become apparent on review of an Appendix at the tail end of the instrument. This risks debate over their application and whether they do in fact constitute 'limits' that must be complied with on the basis that if that was intended it would be stated upfront. This is a risk notwithstanding the strong language around the mandatory nature of the principles in Appendices 3 and 4, which is supported and should be retained.	(d) where more than minor residual adverse effects cannot be demonstrably avoided, ~~minimised, or~~ remedied, or mitigated biodiversity offsetting is provided for more than minor residual adverse effects where it is possible; and (e) where biodiversity offsetting ~~of more than minor residual adverse effects~~ is not demonstrably possible, biodiversity compensation is provided for more than minor residual adverse effects; and (f) ~~if~~ biodiversity offsetting and biodiversity compensation, cannot be used, and the activity itself ~~is~~ must be avoided, where: • the indigenous biodiversity affected is Threatened or At Risk (Declining); or • the effects on indigenous biodiversity are uncertain, unknown,

		This risk is increased when words like "appropriate" are used, which arguably introduces discretion. The importance of limits to biodiversity offsetting and biodiversity compensation is significantly increased if the removal of the 'High' SNA classification is retained (discussed in detail below). If that occurs, then the limits to biodiversity offsetting and biodiversity compensation become the underlying "biophysical bottom lines"[32] that all activities must meet. The RMA was intended to manage natural resources through setting "biophysical bottom lines" that "must not be compromised". Provided activities are "compatible with hard environmental standards" they can take place.[33] If the limits to offsetting and compensation are not included in the exposure NPSIB in a way that makes them 'bite', then it will fail to set clear, hard biophysical limits for a wide-ranging group of activities (being those subject to exceptions in the exposure NPSIB). Another aspect of the effects management hierarchy that underscores the importance of having the limits to when biodiversity offsetting and compensation are available in the hierarchy itself is the use of the term "practicable". The term "practicable" allows for financial considerations, as well as technical and physical feasibility.[34] This increases opportunity for an applicant to 'avoid' the avoid (and other) requirements and move down the effects management hierarchy to then rely on biodiversity offsetting and compensation. This needs to be counterbalanced by being explicit about when these tools are not available.	or little understood but the potential effects are significantly adverse; or • there are no technically feasible options by which to secure gains within an acceptable timeframe. (g) Where biodiversity offsetting and biodiversity compensation can be used in accordance with (f), an action must meet the definition of biodiversity offset in clause 1.6 and the principles in Appendix 3, or the definition of biodiversity compensation in clause 1.6 and the principles Appendix 4. If it does not, then the action does not qualify as a biodiversity offset or biodiversity compensation and the activity causing the more

[32] The RMA was intended to manage natural resources through setting "biophysical bottom lines" that "must not be compromised". Provided activities are "compatible with hard environmental standards" they can take place.
[33] Third Reading RMA, Rt Hon Simon Upton.
[34] See for example *Tauranga Environmental Protect Society Inc v Tauranga City Council* [2021] NZHC 1201 at [133]-[150].

		Limits to biodiversity offsetting and compensation should be listed upfront, in the effects management hierarchy, as limits to both biodiversity offsetting and biodiversity compensation. If one or more of the limits applies, then the activity cannot not go ahead. This provides certainty and clarity. The proposed changes simply mean the effects management hierarchy concepts aligns with what is clearly the underlying policy intent. For clarity, if other or alternative limits to biodiversity offsetting and compensation are adopted, they should be included in the effects management concept in the manner specified. *Vulnerable and irreplaceable* One of the situations where biodiversity offsetting and biodiversity compensation are inappropriate is where the residual adverse effects impact "vulnerable or irreplaceable species". The terms "vulnerable and irreplaceable" are not defined in the exposure NPSIB. In *Oceana Gold Ltd v Otago Regional Council* [2020] NZHV 436, the High Court confirmed it was lawful for a regional policy statement to include specific limits on when biodiversity offsetting and compensation are available. However, it found that a limit that a biodiversity offset or compensation must ensure "there is no loss of individuals of rare or vulnerable species as defined in the reports published prior to 14 January 2019 under the New Zealand Threat Classification System" was unlawful because the NZTCS does not define those terms.[35] On referral back the Environment Court[36] amended the limit to require no loss of individuals of Threatened or At Risk (Declining) taxa, on this basis these categories correspond with rare or vulnerable. To ensure the limits are clear, and align with findings of the Courts, it is suggested that the 'vulnerable or irreplaceable' limit is replaced with reference	than minor residual adverse effects must be avoided.

[35] At paras 22-24.
[36] *Oceana Gold Ltd v Otago Regional Council* [202] NZEnvC 137 at paras 11-13.

		to NZTCS categories. Alternatively, vulnerable or irreplaceable could be defined to make their application clear. <u>Biodiversity offsetting or biodiversity compensation not achievable</u> As drafted the effects management hierarchy is not explicit about the outcome if a proposed action to address more than minor, residual adverse effects does not meet the applicable definition in cl 1.6 or the principles in Appendix 3 or 4. Rather, the reader is simply directed to the definitions and appendices. If more than minor residual adverse effects cannot be offset or compensated for in the way to meet the relevant definition and as specified in Appendices 3 and 4 then the activity should not be able to occur. This should be clear on the face of the effects management hierarchy to avoid uncertainty and resultant litigation. Biodiversity offsetting and compensation are already risky actions. International literature shows that they have, for the most part, been unsuccessful in securing positive outcomes for indigenous biodiversity (see discussion at Appendix 3 below). In that context, the likelihood that actions that cannot meet the biodiversity offsetting or compensation principles will achieve good indigenous biodiversity outcomes is extremely low, and inconsistent with a precautionary approach. It appears from the introductions to Appendices 3 and 4 (which state that an action must comply with their principles to "qualify" as an offset or compensation) that not allowing activities that cannot meet the offsetting or compensation principles is intended. Amendments to the fundamental concept to make this clear are sought.	

Adverse effects	Oppose – new concept sought to be introduced	The BCG NPSIB and the previous draft consulted on included a fundamental concept identifying potential adverse effects on indigenous biodiversity. This has been deleted. This deletion is opposed. The fundamental concept should be retained. There is often disagreement over or a lack of clarity about what constitutes an adverse effect as between parties or as between different plans. This fundamental concept provides helpful, practical direction on what applicants, interested parties, and local authorities should be thinking about when managing effects on indigenous biodiversity.	Insert 'adverse effects' fundamental concept as set out in previous draft consulted on.
1.6 Note: defined terms are addressed in the order in which they appear in the exposure NPSIB			
Biodiversity compensation	Needs amendment	Subsequent amendments are required to clarify that a biodiversity compensation is not available where the limits proposed to be included in cl 1.5 apply.	Amend as follows: "**biodiversity compensation** means a conservation outcome that complies with the principles in Appendix 4 and results from actions that are intended to compensate for any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, remediation, and

			biodiversity offset measures have been sequentially applied, and only in situations where cl 1.5(f) does not apply.
Biodiversity offsetting	Needs amendment	As for biodiversity compensation.	As for biodiversity compensation.
Ecological integrity	Needs amendment, new definition sought to be introduced	The definition of ecological integrity that is used is different to the draft definition proposed to be included in the NBEA. This appears to be because it is a local ecosystem-based description of 'site condition', as opposed to being focused on integrity of indigenous biodiversity generally. It is not an appropriate or workable definition of ecological integrity more generally, because • representation (the extent to which the full range of ecosystems or environments persists) is a key component of ecological integrity (e.g., see the Environmental Reporting Act 2015); and • • (2) there will be conflicts if a more appropriate definition is used in the NBEA. It is recommended that: • The existing definition is renamed ecological condition and is used in clauses that clearly refer to local site condition. These appear to be:	As stated in column to left.

		These are cls 3.8 (2)(f), 3.15 (2)(b), 3.21 (2)(a) and (d), and 3.24 (2)(d), and 3.25 (2)(a)(i) and Appendix 1A(3) and (6)(a). • Ecological integrity should be retained as a defined term, but the definition should be changed to: "the ability of the natural environment to support and maintain the full range of indigenous biodiversity and ecosystem functioning, both within and across ecosystems. It requires supporting and maintaining: ecological representation: the occurrence and extent of ecosystems and indigenous species and their habitats across the full range of environments; composition: the natural diversity and abundance of indigenous species, habitats, and communities within and across ecosystems; structure: the biotic and abiotic physical features and characteristics of ecosystems; functions: the ecological and physical functions and processes of an ecosystem; and resilience: any other properties that contribute to resilience of the indigenous components of ecosystems to the adverse impacts of natural or human disturbances." This term, with the new supporting definition, should be used in cl 3.6 (1)(a)) and Appendix 1D(2)(b) because those clauses are not 'about' just local site condition.	
Ecosystem function	Needs amendment	See amendments and rationale in comments on cl 1.5	
Te Rito o te Harakeke	Adjust ordering	This concept was originally called "Hutia Te Rito". Its renaming means the definition needs to be shifted downward to be in correct alphabetical order.	

Highly mobile fauna area	Adjust ordering	This definition is currently located below the defined terms beginning with 'I' and should be above them.	
SNA	Needs amendment	The definition of SNA has been amended so that it excludes areas identified as SNAs using the criteria in Appendix 1 as part of a resource consent application, prior to the SNA identification processes required by the exposure NPSIB being undertaken. This is strongly opposed. This will initiate an environmental 'gold rush' with people clearing indigenous vegetation or indigenous habitat now, in order to avoid the policy direction that eventual identification of an area as an SNA would introduce. An example of where this is highly like to occur is Wellington City, where the council has just decided not to introduce SNA mapping into its plan, despite having undertaken this exercise, due to public opposition by some members of the community[38]. This clearance will severely undermine maintenance of indigenous biodiversity. It is also not consistent with the sustainable management of natural and physical resources, as is failure to address and control it in the NPSIB. The clause, and its failure to protect SNAs before mapping has taken place, is therefore considered to be *ultra vires* the RMA as it fails to meet the requirements of s 6(c). Where a risk of a 'gold rush' that would undermine pending indigenous biodiversity has been identified, the Court has taken action to ensure that relevant provisions have immediate legal effect, for example on notification of the relevant planning instrument.[39] In this instance, this interim protection is	Amend the definition of SNA as follows: SNA, or significant natural area, means: (a) any area that, on the commencement date, is identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); (b) <u>prior to a plan change implementing cl 3.8 being made operative, or confirmation under cl 3.8(4), any area that is identified as a significant natural area in accordance with Appendix 1 through an assessment as part of a resource</u>

[38] https://www.stuff.co.nz/dominion-post/news/wellington/129070063/biodiversity-protection-rules-walked-back-in-wellingtons-new-district-plan
[39] See for example *Re Mackenzie* [2017] NZEnvC 202.

		partly achieved through having areas identified using the criteria as part of a resource consent application qualify as SNA up until a plan change is made operative introducing the mapped SNAs. This will not achieve full protection as existing rules may be inadequate to ensure a resource consent requirement and so a significance assessment is required in all situations where an SNA may be adverse affected. But it is better than the exposure NPSIB's current approach. This was also the approached proposed and agreed to by the BCG. After this time, as also agreed by the BCG, regional policy statements should be able to specify specific circumstances where a SNA assessment is required as part of a resource consent application, and such an area should be treated as an SNA if identified. This has also been deleted in the exposure NPSIB and should be reinserted as discussed at cl 3.16. The environment is not static, and human assessment is not perfect. If this is not provided for it is not clear how local authorities will become aware of new SNAs on private land.	consent application or NOR; and (b) any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 1
Terrestrial environment	Needs amendment	This definition is overly complex. It also relies on terms that are said to be defined in the NPSFM that are not (e.g., freshwater ecosystem). In accordance with amendments recommended to cl 1.3, this definition should be amended to simply say it does not include freshwater, water bodies, and the coastal marine area.	Amend as follows: "means land and associated natural and physical resources excluding, the coastal marine area, water bodies, and freshwater. ~~above mean high-water springs, excluding land covered by water, water bodies and freshwater ecosystems (as those terms are used in the National Policy Statement for~~

			~~Freshwater Management 2019) and the coastal marine area~~
Non-urban environment	New definition sought to be inserted	See discussion and rationale in comments on cl 3.22.	Insert new definition: "**Non-urban area:** The total area of each LENZ Level 3 environment within a region, outside of the region's urban environments."
1.7	Support		
Part 2			
2.1	Needs amendment	The RMA was intended to put in place biophysical bottom lines "that must not be compromised" by human activity.[40] The key, statutory bottom lines the exposure NPSIB is to give substance to are: maintenance of indigenous biodiversity (ss 30 and 31 RMA); protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (s 6(c) RMA); and the matters in s 5(2) RMA. As framed the objective does not meet these statutory bottom lines. Instead, it puts a qualification on their achievement through directing that protection, maintenance, and restoration are to be achieved "in a way that… provides for the social, economic, and cultural wellbeing of people and communities now and in the future." This creates opportunity to argue that a proposed restriction or control does not implement or give effect to the objective of the exposure	Amend objective as follows: "The objective of this National Policy Statement is to maintain the indigenous biodiversity of Aotearoa New Zealand".

[40] Third Reading of the RMA, Rt Hon Simon Upton.

		NPSIB because it does not provide for (for example) economic wellbeing in a specific way. It is not sufficiently clear on the face of the objective, that restrictions or controls do "provide for social, economic, and cultural wellbeing" through protecting and maintaining indigenous biodiversity. It is understood that the new NPS structure MFE aims to adopt across NPSs is for there to be one objective. In that context, the objective of the exposure NPSIB should simply be to "maintain indigenous biodiversity in Aotearoa New Zealand". This single objective avoids risk of conflict and disagreement over interpretation. It captures protection and restoration as parts of maintenance. It also provides scope for policies and implementation clauses that specify when, where, and how activities can occur, and for recognising the role of tangata whenua and kaitiaki and other New Zealanders as stewards. If, however, reference to social, cultural, and economic wellbeing or human use must be retained, this should be done in way that creates a clear hierarchy of objectives, with the maintenance of indigenous biodiversity being the overriding objective. This would align with the approach of the NPSFM.	
2.2	Needs amendment	Policies 3, 10, and 17 require amendment and are opposed in their current form. <u>Policy 3</u> The direction to adopt a precautionary approach "when considering adverse effects on indigenous biodiversity" risks interpretation that the precautionary approach is only relevant when considering a resource consent application. A precautionary approach to effects should also be adopted when preparing planning documents, and particularly in determine the activity status that applies to a specific activity in a specific area. The applicability of the precautionary	Amend Policies 3, 10, 11 as follows: <u>Policy 3 to read</u> A precautionary approach is adopted when considering adverse effects on indigenous biodiversity, when making decisions on resource consent application and in preparing or

		approach to both contexts should be clear on the face of the policy to ensure clarity and avoid conflict in interpretation. Policy 10 Policy 10 is too broadly framed. It is possible to argue that any activity provides for social, economic, cultural, environmental well-being and should therefore be "provided for". This policy is intended to identify that a limited number of specified activities are to be recognised and provided for in a more lenient way because of their specific characteristics. The policy needs to be reframed to focus on these specific activities, in order to drive and support the limited focus of the implementation clauses that sit below. It is not necessary for the policy to be broad enough to also capture other new activities that can meet the limits that apply to SNAs and elsewhere. This is because these activities are acceptable in terms of their effects on indigenous biodiversity. Policy 17 Policy 17 is missing a word linking improved information to indigenous biodiversity. Amendment is needed for clarity	changing policy statements and plans. Policy 10 New a~~A~~ctivities that provide a significant contribute to New Zealand's social, economic, cultural, and environmental well-being are identified in this National Policy Statement and are recognised and provided for in appropriate places and forms, and within appropriate limits. Policy 17 There is improved information about, and regular monitoring of, indigenous biodiversity.
Part 3			
Subpart 1 – approaches to implementing this National Policy Statement			
3.1	Support	It is helpful to provide an overview of the content and underlying focus of each of Part 3's subsections, and to clarify that the actions specified as needing to be undertaken to give effect to the exposure NPSIB's objective and policies are not	

		exhaustive. This provides scope for additional or further actions to maintain indigenous biodiversity if this is needed within a region.	
3.2	Needs amendment	The intent of cl 3.2 is supported. Recognition of the role of people in achieving maintenance of indigenous biodiversity is also an important aspect of the clause and is supported. Human activity is the primary driver of indigenous biodiversity loss (see Section 2 above), so humans and a change in human behaviour is imperative if loss is to be halted and reversed and indigenous biodiversity maintained. Adopting ki uta ki tai as the framework for achieving integrated management is supported. This recognises the intertwined nature of different parts of the natural environment, both in terms of environmental domains and in terms of ecotones (area of transition between ecological communities). However, consequential changes in light of the matters discussed under cl 1.5 above are required. This is to ensure that it is clear that Te Rito o te Harakeke, like Te Mana o te Wai, comprises a hierarchy of obligations with the first being to protect te hauora o te koiora, recognising the connections between koiora and nga taonga and te Taiao. This will ensure the outcomes the exposure NPSIB is intended to achieve are clear.	Amend cl 3.2 (2)(a) as follows: (2) Giving effect to Te Rito o te Harakeke requires, at a minimum, that local authorities: (a) <u>apply the hierarchy of obligations in cl 1.5, by prioritising:</u> (i) First, te hauora o nga koiora (the health of indigenous biodiversity), recognising the connections between this and: • Te hauora o te taonga (the health of taonga); and • Te hauora o te Taiao (the health of the wider natural environment): (ii) Second, the ability for people and communities to use natural and physical resources to provide for their

			social, economic, and cultural well-being, now and in the future. (b) <u>recognising the interrelationship between nga hauora at clause 3.2(2) (a)(i) above and te hauora o te tangata (the health of the people).</u> (c) existing (b) to become (c).
3.3	Support	This clause closely resembles that prepared by the BCG and is supported. It is important that tangata whenua are properly supported to contribute to development and co-design of management approaches and policy. Lack of safe spaces for this to happen and lack of understanding about whakapapa and history, and of the significance to taking individual pieces of one knowledge system and putting them into a legal framework from another, were identified in RMLA "Implementation Road Show Report"[41] as key barriers to successful co-design. The Implementation Road Show Report identifies potential solutions to these problems, developed with the assistance of a diverse range of road show panellists. MFE's draft implementation plan, provides no recommendations for practical implementation measures on the ground to address these issues, despite their resolution being essential to effective implementation of the exposure NPSIB and to improving tangata whenua involvement in resource management.	

[41] Garvan N, Wright M; *Implementation Road Show Report*; RMLA, 2022. See pgs. 2 and 5.

3.4	Support	This clause closely resembles that prepared by the BCG and is supported.	
3.5	Needs amendment	Cl 3.5 has been changed from the version in the previous draft (there cl 1.7), and as proposed by the BCG, in two key respects: a. Para (1) has been amended to replace a direction that local authorities must "recognise" the matters listed in (a)-(e), with a direction that they must "consider" then. b. Sub-para (b) has been amended to read "that the protection, maintenance, and restoration of indigenous biodiversity does not preclude subdivision, use, and development in appropriate places and forms", instead of reading that those outcomes do "not preclude subdivision, use, and development in appropriate places and forms, <u>and within appropriate limits".</u> <u>Consider</u> The term "consider" does not require any action to be taken. It simply requires local authorities to turn their mind to the matters listed. In contrast, the term "recognise" demands that some provision be made for these matters in policy statements and plans – otherwise they are not recognised. Although it is not a key point for Foret & Bird, it is suggested that "consider" should be deleted and "recognise" inserted. <u>Appropriate limits</u> The delete of "within appropriate limits" is opposed. As noted, the RMA is founded on the concept of biophysical limits. This phrase recognises the role that limits on extent of harm and/or level of effect are a critical aspect in	Amend as follows: <u>Para (1)</u> Replace "consider" with "recognise". <u>Sub-para (b):</u> Re-insert "and within appropriate limits" and the end of (b).

		determining the appropriateness of any activity. In addition, place and form are not the only matters that will determine appropriateness. For example, it may be because of cumulative effects that an activity is precluded, not because of its location and form per se.	
3.6	Needs amendment	The intent behind cl 3.16 is supported. It is noted that cl 3.6 has been amended from the previous draft (there cl 3.5) so that it no longer expressly limits its application to consent decisions. This is supported as these matters are relevant to both decisions on policy statements and plans and on resource consents. This is strongly supported for the reasons set out in Forest & Bird's submission on the previous draft.[42] However, it would be clearer if the clause expressly stated that it applied to both types of decisions. This will ensure planning documents incorporated forward looking climate considerations, and that decisions on consents apply a climate change resilience lens to assessing adverse effect and restoration. It is also submitted that cl 3.6 requires a new, further requirement to be placed on local authorities to ensure that an interregional approach is taken to managing climate change adaptation by indigenous biodiversity.[43] This is because ecosystems and the indigenous biodiversity they support do not adhere to manmade jurisdictional boundaries. Aotearoa New Zealand's ecosystems and the climate that characterises them generally move from warmer to cooler from north to south. As the average temperatures rise, indigenous biodiversity that currently persists in northern areas will need to be able to move south to survive, likely requiring a move across jurisdictional boundaries. Supporting this transition will require local authorities to take a joined-up approach to providing	Amend cl 3.6 as follows: Amend (1) to make it clear that the matters in cl 3.6 must be considered when both making and changing plans and making decisions on resource consent applications. Amend (b) to include new (iii): "the actual and potential adverse effects on an activity on indigenous biodiversity". Insert new (d): "working with neighbouring local authorities to ensure natural adjustments of habitats and ecosystems, and ecological corridors to enable migrations are successfully

[42] See paras 79-85.

[43] Ssupporting changes are also sought to the clauses relating to Regional Biodiversity Strategies as a mechanism for practically achieving this integration.

		for natural adjustments, and links to enable migration. By way of example, this is a key issue for the Upper North Island Strategic Alliance (UNISA).	provided across jurisdictional boundaries".
3.7	Needs amendment	A clause requiring adoption of a precautionary approach to decision-making affecting indigenous biodiversity is supported. It is essential given the declining state of Aotearoa New Zealand's indigenous biodiversity, the challenges associated with restoration or replacing it because of its unique characteristics, and our high levels of endemism. As drafted cl 3.7 is clear that a precautionary approach is mandatory in certain situations, and what those situations are (cl 3.7(a) and (b)). This is supported and should be retained. What cl 3.7 is not clear about is what a precautionary approach entails. This issue was raised in Forest & Bird's submission on the previous draft.[44] The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 states that where information is uncertain or inadequate the decision-maker "must favour caution and environmental protection". An analogous requirement should be added to cl 3.7 to clarify what is required of decision-makers when applying a precautionary approach under the exposure NPSIB.	Amend cl 3.7 as follows: Insert new (2): "Where a precautionary approach must be adopted local authorities must favour caution and protection of indigenous biodiversity".
Subpart 2 – Significant Natural Areas			
3.8 & 3.9	Needs amendment	Cl 3.8 and 3.9 are supported, with the exception of allocating responsibility for identifying SNAs to territorial authorities, and deletion of the requirement for 2-yearly plan changes after completing the comprehensive SNA assessment required by cl 3.9 to include any new SNAs that are identified.	Retain cl 3.8.

[44] See paragraphs 86-88.

		<u>Overall support</u> Spatial identification of SNAs provides certainty in terms of environmental protection and to landowners about where the undertaking of activities will be more restricted. Without a mandatory requirement to identify SNAs, local authorities often shy away from doing so because of pressure from one part of the community that sees SNAs as compromising private property rights. This was most recently done by Wellington City Council.[45] Spatial identification and management of SNAs through plan provisions is also essential to halt indigenous biodiversity decline and to recognise and provide for protection of SNAs as a matter of national importance (s 6(c) RMA). The current system heavily relies on voluntary protection. Data showing the continuing decline of indigenous biodiversity shows that this approach is not working. For example, recent data from Manaaki Whenua showed:[46] • In Hawke's Bay, 39ha of indigenous forest and 171ha of tussock was converted to low producing grassland between 2012-2018. • Between 2012-2018 Canterbury cleared 1468ha of matagouri, more than any other region, turning it into pasture. • Between 2012-2018 Manawatu-Wanganui contributed to a North Island trend of clearing manuka and kanuka, converting 892ha into pasture and exotic forestry. The controversy over identification of SNAs highlights the importance of identifying through an approach that includes and respects landowners. This was	Consider amending to allocate responsibility for identifying SNAs to regional councils. Reinsert requirement in cl 3.8(8) of previous draft for 2-yearly plan change.

[45] https://www.stuff.co.nz/dominion-post/news/wellington/129070063/biodiversity-protection-rules-walked-back-in-wellingtons-new-district-plan
[46] Manaaki Whenua Landcare Research Land Cover Database, Version 5.0, released in January 2020 and reproduced under creative commons license 4.0 – http://lris.scinfo.org.nz/layer.104400-lcdb-v50-land-cover-database-version-50-mainland-new-zeland/

		the driver behind the SNA identification principles initially recommended by the BCG and included in cl 3.8. These are supported. <u>Responsibility</u> The BCG initially recommended that identification of terrestrial SNAs should sit with territorial authorities because the information it received suggested this was the common approach. However, it acknowledged that this responsibility might better sit with regional councils given their greater capacity.[47] The jurisdictional context has changed since the BCG's recommendations. The NBEA is likely to place regions as the primary (if not the only) level of jurisdictional control for resource management purposes. On that basis, it seems that allocating responsibility to regional councils is likely to support better transition of the exposure NPSIB and its framework into the NBEA system. <u>2-yearly plan updates</u> 2-yearly plan updates were included by the BCG for both an environmental purpose and an administrative purpose. Regarding the former, it ensures that the plan remains up to date and removes controversy over whether an area is a SNA or not and thus subject to the SNA management provisions. Regarding the latter, it was understood that this level of frequency would mean that the plan change would be focused, and cover a small number of areas, thereby reducing time and complexity of the process and the meaning that limited notification might be available.	

[47] BCG Report pg. 22.

3.10	Needs amendment	Protection of SNAs is the lynchpin of the exposure NPSIB and an absolutely critical part of maintaining indigenous biodiversity. It is also a matter of national importance in and of itself under s 6(c) RMA. Identification of "a system of protected areas or areas where special measures need to be taken to conserve biological diversity" is also consistent with Aotearoa New Zealand's obligations under the CBD.[48] <u>Cl 3.10(2)</u> The starting point that the adverse effects in cl 3.10(2) are avoided is strongly supported and is ecologically robust. Those adverse effects are a sub-set of the effects that were identified by the *Critical Factors* report[49] as needing to be avoided to maintain indigenous biodiversity. The *Critical Factors* report was commissioned by the BCG for the specific purpose of answering that question.[50] The BCG Report also identifies that the adverse effects in cl 3.10(2) were those that "were consistently identified throughout the advice [the BCG received] as key effects to avoid".[51] Avoiding these effects is therefore necessary to meet the statutory obligations in s 6(c) and ss 30 and 31 RMA, and to safeguard life-supporting capacity of ecosystems which is required to achieve sustainable management in accordance with s 5(2) RMA. It is also "vital to …prevent and attack the causes of significant reduction or loss of biological diversity".[52] As worded sub-para (e) is unclear about what species it applies to. This is because there is no clear separation between Threatened and At Risk (Declining)	Amend cl 3.10 as follows: <u>Cl 3.10(2)</u> Replace the comma in sub-para (e) with "or". Delete "(Declining)" from cl 3.10(2)(e).

[48] Article 7(a)-(c).
[49] See Table A.
[50] BCG Report pg. 26.
[51] Ibid.
[52] Convention on Biological Diversity, Preamble.

		which are two different categories in the NZ Threat Classification System. This can be simply addressed through replacing the comma with an "or". In addition, sub-para (e) should not be restricted to At Risk (Declining) species. It should capture all four At Risk classifications, just as the general reference to Threatened captures all three Threatened classifications. If a species is identified as At Risk, it means it is at risk of becoming extinct. This is the case regardless of whether it is in the At Risk (Declining) category or another At Risk category. The objective of the exposure NPSIB is to ensure there is "no reduction in" indigenous biodiversity. Allowing loss of At-Risk species is not consistent with that outcome.[53] In a context where indigenous biodiversity is facing unprecedented, ongoing decline, including all At Risk classifications is necessary and consistent with adopting a precautionary approach. <u>Cl 3.10(3)</u> Using the effects management hierarchy to manage adverse effects other than those in cl 3.10(2) is acceptable provided the fundamental concept defining the effects management hierarchy is amended as sought in this submission.	
3.11	Needs amendment	Cl 3.11 provides exceptions to the requirement to avoid specified adverse effects in cl 3.10. Provision of exceptions is acceptable **but** only if the exceptions are extremely limited. To that end, Forest & Bird strongly supports aspects of the clause that limit its application like the requirement for a "significant national or regional public benefit" and limiting mineral extraction subject to an exception to that which has a significant national or regional public benefit and "that could not otherwise be achieved domestically". On the flip side, Forest & Bird considers that the ability for those activities to receive an exception if they have	<u>Cl 3.11(2) & (3)</u> The 'High'/ 'Medium' SNA split is retained and the avoidance requirement in cl 3.10(2) applies to specific infrastructure and new dwellings (per cl 3.11(3)).

[53] *Critical Factors Report* pg. 23, 24.

		an "operational need" to be located in the SNA should be deleted. Functional captures necessity, and the "no practicable alternative" provides for sufficient flexibility for other non-necessity-based reasons. Overall, it is essential that no further exceptions are added to the exposure NPSIB. The *Critical Factors* report found that to maintain indigenous biodiversity, all new activities needed to avoid the adverse effects identified in cl 3.10(2). This means that the greater the extent of exceptions to that requirement, the less aligned the exposure NPSIB becomes with obligation in ss 6, 30 and 31 RMA, and with its own objective. <u>Cl 3.11(1)</u> Comment on the approach to managing effects of activities listed in cl 3.11(1) is provided in context of the relevant clause. <u>Cl 3.11(2)</u> This exception is notably broader than that presented in the previous draft and in the BCG version because it removes the 'High'/ 'Medium' SNA classification and the application of the avoidance requirement in 'High' SNAs with a more lenient approach in 'Medium' SNAs. This means that large scale activities are allowed to establish anywhere, even in areas where allowing adverse effects will have adverse effects on our most threatened indigenous biodiversity. The 'High'/ 'Medium' split approach continues to be supported, for the reasons set out in the BCG Report and in Forest & Bird's submission on the original draft. However, if that approach is not to be adopted, then amendments are required to cl 3.11(2) and the effects management hierarchy fundamental concept to reduce and clarify the reach of the exception provided. If amendments for this purpose are not made, the likelihood of the exposure NPSIB's effects management	OR If the effects management hierarchy is to be applied to these activities in all SNAs then the effects management hierarchy concept is amended as set out in relation to cl 1.5 above, in particular the insertion of the situations where offsetting and compensation are not available to be used. AND Delete operational need from (b). <u>Cl 3.11(4)</u> Amend the pōtae as follows: "Clause 3.10(2) does not apply to an SNA, and all adverse effects on the SNA must be managed instead in accordance with clause 3.10(3) and (4), ~~or any other appropriate management approach, if~~:"

		approach meeting its statutory and internal objectives is low; there is no ecological basis for providing an exception to the requirement to avoid adverse effects in cl 3.10(2). In particular: a. "Specific infrastructure" is broadly defined, in particular sub-paras (b). The definition of infrastructure in s 2 RMA is broad. For example, it includes irrigation systems and cycleways, and walkways. If any of these are identified as regionally significant infrastructure in a policy statement or plan, then it will be up to an opposing party to establish that they do not provide a "national or regional public benefit" if the adverse effects specified in cl 3.10(2) are to be avoided. b. Removing the 'High' classification and the related broadening of the exception for specific infrastructure and mineral extraction, significantly increase the importance of the limits on when biodiversity offsetting and biodiversity compensation is not available. This is because these limits now reflect the only absolute 'no go' effects or situations. For these limits to be applied it is essential for them to be located upfront in the effects management hierarchy and not 'buried' within an Appendix where their application and strength can be more easily questioned in legal proceedings (as discussed). It appears the intent of the exposure NPSIB is that they are applied as hard limits. <u>Cl 3.11(3)</u> This exception was agreed by the BCG, but only in 'Medium' SNAs. The exposure NPSIB does not use the concept of 'Medium' SNAs which means this exception now applies more broadly, across all SNAs. This is acceptable **if** the effects management hierarchy fundamental concept is amended in as sought	Amend (a) as follows: "the use of development is <u>essential</u> for the ….". Amend (b) as follows: Insert "and" after (ii) and insert a new (iii): "there is adequate evidence to demonstrate that the area of indigenous vegetation or habitat of indigenous fauna was established and is managed for that purpose". <u>Cl 3.11(5)</u> Consider how cl 3.11(5)(c) can be amended to ensure the maintenance of indigenous biodiversity is achieved.

		above, to put 'limits' on when biodiversity offsetting and biodiversity compensation are available in the hierarchy itself. <u>Cl 3.11(4)</u> The pōtae to cl 3.11(4) provides for application of the effects management hierarchy "or any other appropriate management approach". The ability to decide not to apply the effects management hierarchy is opposed. It is not clear what would constitute an "appropriate" approach, nor why this exception is needed. The effects management hierarchy is clear and provides certainty about how effects should be managed. It also provides sufficient flexibility to accommodate the types of activities captured by cl 3.11(4). Sub-para (a) was agreed by the BCG. It is supported in principle on the basis that it recognises sometimes activities for maintaining or restoring a SNA may have short term adverse effects. However, amendment is sought to limit the exception to use or development "that is essential" for the purpose of maintain or restoring an SNA. Activities for those purposes should generally avoid the adverse effects in cl 3.10(2) by virtue of their underlying purpose. This should only not be the case where allowing an activity with those effects is essential. This avoids the exception being relied on for improper purposes. It also helps to ensure the except is as a narrow as possible. Sub-para (b) was agreed by the BCG. It is supported in principle because it ensures that natural infrastructure remains fit for purpose, and that the use of natural infrastructure (e.g., wetland stormwater devices) continues. However, amendment is sought to require that evidence be provided to confirm that an area of indigenous vegetation or habitat at issue was in fact established and is actively managed for the contended purpose. This is essential to avoid the policy	

		being used as a loophole allowing widespread clearance and vegetation or habitat loss, in a similar way to that enabled by improved pasture exceptions of not carefully designed. It also helps to ensure the except is as a narrow as possible. The amendments proposed are intended to conceptually align with the approach adopted in cl 3.17. <u>Cl 3.10(5)</u> The exceptions in cl 3.10(5) generally align with the recommendations of the BCG and are accepted. It is noted that: a. sub-para (c) provides for "sustainable customary use of indigenous biodiversity" with no direction on how potential adverse effects are to be managed. The BCG draft did not provide an exemption to managing adverse effects for customary use (or take). The importance of customary take is acknowledged, however, given the deleterious state of indigenous biodiversity it is important that any potential adverse effects are managed. b. sub-para (d) is only considered acceptable because of its narrow application to "work or activity of the Crown". It is also noted that this diverges from the BCG's recommendations that applied the same approach to public conservation land and to private land irrespective of who was undertaking the activity. Any extension of this exception to activities undertaken on public conservation land generally is strongly opposed. Many activities occur on public conservation land, and some are destructive to indigenous biodiversity. The Mokihinui Dam, Ruataniwha Dam, and the Denniston Escarpment Mine are examples,	

		and all affect or would have affected conservation land. Applying a more lenient approach to public conservation land does not recognise its importance of maintaining indigenous biodiversity, does not recognise the public interest in protecting public conservation land and unfairly distinguishes between public conservation land and private land. c. A bespoke approach for Te Urewera is appropriate given it is subject to its own legislative regime.	
3.12 & 3.18	Needs amendment	The historical reasons for applying a different approach to Māori Land are acknowledged, as is the importance of Te Tiriti o Waitangi (s 8 RMA). The Exposure NPSIB significantly extends the definition of Māori Land from that in the BCG draft and the initial draft consulted on. No comment is made on this extended definition; however, it means that a much larger part of Aotearoa New Zealand will fall within its ambit. Some of this land will be home to significant indigenous biodiversity, and if this biodiversity is lost, it will have implications for achieving maintenance of indigenous biodiversity and for the persistence of some of our indigenous species. As currently drafted, cl 3.18 does not provide sufficient clarity and direction about how adverse effects on indigenous biodiversity will be managed on Māori Land, or if they will be managed at all. This is because councils are only told to include provisions in policy statements and plans that "to the extent practicable" maintain and restore indigenous biodiversity and protect SNAs and identified taonga.	Primary relief: Amend clause 3.18 as follows: (1) The effects management hierarchy applies to new subdivision, use, and development in SNAs on Māori Land. ~~(2)~~ Outside SNAs Local authorities must work in partnership with tangata whenua and Māori landowners to develop, and include in policy statements and plans, objectives, policies, and methods as required to implement Te Rito o te

		This is pushing the challenging discussion about what controls should apply, and what is and is not practicable, back to the local level. This is not helpful and undermines the value that national direction should provide and the role it should fill. It is also arguable that it is *ultra vires* s 5 RMA which requires that adverse effects are "avoided, remedied, or mitigated", with no "where practicable" caveat. Clause 3.18(2) then says what the provisions in policy statements and plans must cover, again to the extent practicable. Most of these matters relate to specific types of development not to indigenous biodiversity. Cl 3.18(2)(c) appears to suggest that the effects management hierarchy should be applied to manage the effects of these activities. However, again this is only to the extent practicable. It is acknowledged that this is an area where some local divergence may be necessary to address the place-based perspectives and issues of tangata whenua, but this does not justify having a clause that provides no useful direction or certainty at all, or that means a broad spectrum of activities with potential adverse effects on indigenous biodiversity, including on SNAs, could conceivably be undertaken with no regulatory oversight and no limit on extent or magnitude of effects. If this clause is not remedied it will lead to litigation and to community conflict at the local level, and potentially to widespread loss of indigenous biodiversity. Against that background, it requested that cl 3.18 be amended to apply the effects management hierarchy to activities within SNAs on Māori Land. Outside SNAs objectives, policies, and methods are included in policy statements and plans as required to implement Te Rito o te Harakeke.	Harakeke ~~that, to the extent practicable:~~ ~~(a) maintain and restore indigenous biodiversity on Māori lands; and~~ ~~(b) protect SNAs and identified taonga on Māori lands.~~ (2) Objectives, policies, and methods developed under this clause must, to the extent practicable while meeting (1) above: (a) enable new occupation, use, and development of Māori lands to support the social, cultural, and economic wellbeing of tangata whenua; and (b) enable the provision of new papakāinga, marae and ancillary community facilities, dwellings, and associated infrastructure; and ~~(c) apply or allow alternative approaches to, or locations for,~~

		This approach is similar to that developed and agreed to by the BCG which applied the effects management hierarchy to some activities on Māori Land, although only in Medium SNAs. If central Government does not want to specify the effects management approach that applies to activities on Māori Land then an alternative is recommended which is specific about the outcomes to be achieved, but provides flexibility as to the method(s) through which that is done. It is essential that the outcome does not include a 'where practicable' or equivalent caveat for the reasons already discussed. From an implementation perspective, historical inequity issues paired with the importance of some of the indigenous biodiversity on Māori Land, strongly supports Government's implementation plan including a comprehensive incentives programme to support protection of areas of significant indigenous biodiversity, or restoration and enhancement, on Māori Land. Incentives that not only fit with the current NPSIB framework and Government's broader commitments, but are necessary for successful delivery are: 1. Establishing a biobank system whereby third parties can 'sell' areas of indigenous biodiversity to those needing to offset or compensate for adverse effects; 2. Valuation of and payments for ecosystem services; 3. Extension of carbon sequestration schemes (see BCG Report pg 112)	~~new occupation, use, and development that avoid, minimise, or remedy adverse effects on SNAs and identified taonga on Māori lands, and apply options for offsetting and compensation; and~~ (d) recognise and be responsive to the fact that there may be no or limited alternative locations for tangata whenua to occupy, use, and develop their lands. (3) The decision-maker on any resource consent application must, when considering matters affecting Māori lands, take into account all the matters in subclause (2). (4) Subclauses (2) and (3) do not apply to Māori lands to the extent that the land is set aside under legislation for full or partial legal protection for the purpose of protecting indigenous biodiversity on that land. 'Legal protection' includes

			covenants and land status such as are available under the Reserves Act, Conservation Act, National Parks Act (or equivalent)'. (5) Local authorities must consider and realise opportunities to provide incentives for the protection and maintenance of indigenous biodiversity, and the protection of SNAs and identified taonga, on Māori lands. <u>Alternative relief</u>: Amend 3.18(1) to delete the phrase "to the extent practicable". Amend 3.18(2) to delete (c).
3.13	Needs amendment	Aotearoa New Zealand's geothermal resources are special. They are also extremely vulnerable to adverse effects of human activities, and many have already been degraded due to poor regulation. 70% of our geothermal resources are located in the Waikato region. In the early 2000s the Waikato Regional	MFE to work directly with WRC representatives and geothermal ecologists to amend clause 3.13 as necessary to ensure that protection is provided to Aotearoa New Zealand's undeveloped and

		Council (WRC), introduced an approach to managing activities in geothermal ecosystems. This approach:[54] • Classifies geothermal ecosystems within the regional into five categories: Development, Limited Development, Research, Protected, Small. This classification is based on system size, vulnerability to extractive uses, and existing uses. • Applies a different management approach to each category. - In Development systems significant adverse effects associated with geothermal energy activities are remedied or mitigated. Any adverse effects from other development or uses of land are avoided. - In Limited Development systems significant adverse effects from geothermal energy activities are avoided. Any adverse effects from other development or uses of land are avoided. - In Protected systems all adverse effects are avoided. - In Research and Small systems, significant adverse effects from energy activities must be avoided, and other adverse effects avoided except for research activities in Research systems where effects may be remedied. Forest & Bird understands that the Waikato approach has been positively received by many, but it may nevertheless not be appropriate for national application or could be improved. It is important that whatever approach is adopted that it ensures our untouched and most vulnerable geothermal ecosystems are protected for future generations.	vulnerable geothermal ecosystems, and that development within those systems that are already compromised is limited to geothermal energy.

[54] See Part B Section 9 Operative Waikato Regional Policy Statement – Te Tauaki Kaupapahere Te-Rohe O Waikato.

		As drafted, clause 3.13 does not achieve these outcomes. This is because: • It does not refer to systems being identified due to natural state and well as vulnerability. • It directs "local authorities" to include objectives policies and methods relating to "<u>any</u> new subdivision, use, and development", in their policy statements and plans. This would allow for district councils to promulgated provisions in plans providing for a plethora of land uses within and around geothermal systems. In Waikato this would result in implementation challenges and ambiguity as district councils could point to the exposure NPSIB to support these provisions despite direction to the contrary in regional instruments. This does not achieve regionally strategic, integrated management, and risks loss of some of our most unique and vulnerable ecosystems.	
3.14	Support	An approach that means plantation forests can be SNAs is supported. Ecologically, this is correct, and it is scientifically inaccurate to say otherwise. Whether a plantation forest that is also a SNA is treated differently from a SNA that is not is a management decision and should be portrayed as such. The exposure NPSIB correctly makes this distinction. The requirement that plantation forests be managed as necessary to maintain the long-term populations of any "Threatened or At-Risk species", is strongly supported. Any whittling down of this requirement risks significant loss of indigenous biodiversity, particularly indigenous fauna. The importance of capturing all At Risk classifications is discussed in context of cl 10(2) above and is equally applicable in this context. The reference to species captures both flora	

		and fauna which recognises the critical habitat plantation forests can play for indigenous vegetation growing in the understory. It is noted that significant issues with the NESPF across all areas of environmental management have been identified.[55] The NESPF needs substantial amendment to be fit for purpose and typical forestry practices need to improve if forestry is to achieve better environmental outcomes.	
3.15	Support	This clause aligns with the intent of the BCG. It is supported for the reasons set out in the BCG Report.[56]	
3.16	Oppose and replace with new clause	SNAs will not generally capture seral vegetation that is less than 25 years of age, or all critical habitat for indigenous fauna. Ensuring viable populations of these types of indigenous biodiversity is essential if there is to be no reduction in indigenous biodiversity, and to provide restoration opportunities. Management outside SNAs is also necessary to ensure resilience to climate change, to provide for migration corridors. A key driver of indigenous biodiversity loss generally, but specifically outside of identified areas, is the failure to recognise and control cumulative adverse effects. It is for this reason that the version of this clause recommended by the BCG provided specific direction on cumulative effects. Cl 3.16 does not tackle the issue of cumulative effects head on. It is also extremely unclear as to what it requires of decision-makers and does not align with the statutory obligation on local authorities in ss 30 and 31 RMA:	Replace cl 3.16 with the following: (1) This clause applies to the terrestrial environment outside SNAs, other than Māori Land where clause 3.18 applies. (2) Local authorities must recognise that maintaining indigenous biodiversity requires more than protecting SNAs by at least: (a) making or changing policy statements and plans to specify

[55] Wright M, Gepp S, Hall D, *A Review of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017*, April 2019.
[56] Pg 31-31.

		a. Para (2) states that local authorities must "take steps to maintain indigenous biodiversity" outside SNAs. This could be interpreted as misstating the obligation on local authorities under ss 30 and 31. That obligation requires local authorities to maintain indigenous biodiversity *per se*. This obligation applies inside and outside SNAs; protecting SNAs is simply one part of this. A direction that local authorities must "take steps" to maintain indigenous biodiversity, suggests that some action must be taken but they do not need to be sufficient to achieve the objective of maintaining indigenous biodiversity. This is opposed. A clearer, and legally correct approach is to direct local authorities to specify in policy statements and plans the controls necessary to achieve maintenance of indigenous biodiversity. This approach is specific and directive as to outcome but provides flexibility as to method in order to respond to local circumstance. b. Sub-para (b) requires application of the effects management hierarchy to adverse effects of new activities that "may be irreversible". What this is intended to capture is unclear – is it the activity or the effect that must be reversible? Within what timeframe must they be reversible? Most activities are reversible within some period of time. If this is retained, it is likely to be a major driver of litigation. This issue can be overcome by amending the clause to focus on outcome as specified above. Cl 3.16 has also been amended to delete the requirement for local authorities to specify in policy statements or plans when, how, and where a significance assessment is required outside identified SNAs. This requirement is essential for local authorities to be able to keep plans up to date, and to capture the non-static nature of the environment. It was agreed to by all BCG members.	objectives, policies, and methods (including rules), to maintain indigenous biodiversity and addressing, at a minimum: • cumulative adverse effects; • pest plants and animals; • fragmentation of habitats; • connectivity, between ecosystems and habitats; and • resilience of indigenous biodiversity to climate change. (b) applying the effects management hierarchy to new subdivision, use, and development that needs to be controlled to meet (a); (3) Regional councils must specify in regional policy statements where, how, and when for any area outside an SNA, an assessment using the

			criteria in Appendix 1 is required.
3.17	Needs amendment	The intent of cl 3.17 is strongly supported. Conflict between maintenance of improved pasture and protection of SNAs has been an area of significant conflict over the last decade. This is particularly so in areas like the Mackenzie Basin where pastoral farming has been undertaken for generations using maintenance regimes that have allowed significant indigenous vegetation to persist, but where intensification or a maintenance regime change would destroy that indigenous vegetation. Many of these indigenous species are found only in these small geographic areas, meaning if they are lost there, they are lost globally. For the most part, cl 3.17 reflects the detailed discussions between Forest & Bird, EDS, and Federated Farmers over how to address this issue. It acknowledges the social and economic importance of maintaining improved pasture but ensures that the level of maintenance stays at a level that is consistent with maintaining indigenous biodiversity. There are, however, some issues with the current drafting: a. Subpara (2)(c) is not clear. It is understood that the intent of the clause is to allow maintenance of improved pasture, including where the improved pasture area is an SNA, provided standards relating to effects were met (which are reflected in (2)'s other sub-paras). Sub-para (c) appears to be contrary to this intent. b. Subpara (2)(e) refers to Threatened or At Risk (Declining) species. For the reasons set out at cl 3.10 above, this should simply refer to At Risk	Amend as follows: <u>Clause 3.17(2)(3)</u> Review (c) to determine alignment with intent of clause. Delete "(Declining)" <u>Improved pasture</u> Replace "or" in the second line with "and".

		species generally, in the same way it refers to Threatened species generally. c. Special treatment should only be provided for improved pasture that has been actively and deliberately established, not adventive species. This is not clear on the face of the definition of improved pasture which refers to exotic pasture species being sown "or" maintained. This can be addressed by changing "or" to "and".	
Subpart 3 – Specific requirements			
3.18		See discussion next to cl 3.12 above.	
3.19	Needs amendment	The provision for identification and protection of indigenous biodiversity that is taonga is supported. It is a significant step forward in recognising and incorporating Te Ao Māori into Aotearoa New Zealand's law. <u>Taonga and SNA overlap</u> The original draft NPSIB and the BCG's draft both addressed how taonga were to be managed if also an, or within a SNA. This has been deleted. It needs to be reinserted to avoid confusion over the level of protection and the approach to effects management that applies. This is particularly important because cl 3.19 is less prescriptive as regard protection that cl 3.10. If taonga is/are also an SNA it should be subject to at least the same level of protection as a SNA, if not more given its multiple values. <u>Where taonga can and cannot be identified</u>	Amend 3.19(1) as follows: Every territorial authority must work together with tangata whenua (using an agreed process) to determine the indigenous species, populations, and ecosystems in the district that are taonga. <u>These indigenous species, populations and ecosystems are</u>~~;~~ are acknowledged taonga. Amend 3.19(7) as follows: (7) For the avoidance of doubt:

		The 'avoidance of doubt' clause cl 3.19(7) is unclear. By referring to "species, population, or ecosystem" in the coastal marine area or water bodies, it is arguable that it excludes identification of a species that spends part of its lifecycle in the coastal marine area or a water body and part without; those species are still "in" those environments, just part of the time. As discussed earlier in this submission, it is clearer to define the scope of the exposure NPSIB based on physical area, not in relation to indigenous biodiversity which often moves between environmental domains. As a result, cl 3.18 should be amended to align with that approach. The semi-colon used in cl 3.19(1) makes the sentence unclear. Changes a recommended to use an alternative sentence structure.	(a) this clause does not apply within the coastal marine area, or to freshwater and water bodies; and (b) where an acknowledged or identified taonga is also a SNA it must be managed in accordance with cl 3.10, or in a way that is more stringent than cl 3.10.
3.20	Needs amendment	A policy focused on maintaining long term populations of highly mobile species across their natural range by managing areas that are not SNAs is strongly supported. This clause was initially recommended (in an alternative form and without a limiting appendix), by the BCG. The intent[57] was to capture areas of <u>potential</u> habitat for threatened and at risk highly mobile fauna, that may not be identified as a SNA because of uncertainty as to its role in the fauna species' lifecycle or feeding or breeding patterns.[58] There are some aspects of cl 3.20 which require amendment to ensure correct interpretation and clear and consistent application:	Amend as follows: (2) If it will help manage <u>adverse effects on</u> specified highly mobile fauna, regional councils must include in their regional policy statements (where possible) a map and description of each highly mobile fauna area in its region.

[57] BCG Report pg. 28.

[58] Noting that habitat of Threatened or At-Risk species is an SNA under Appendix A Criterion C Rarity and Distinctiveness, and habitat is defined as "the <u>area or environment</u> where an organism or ecological community lives or occurs naturally <u>for some or all of its life cycle, or as part of its seasonal feeding or breeding pattern</u>". SNA's therefore capture known temporary habitat of Threatened or At-Risk species, but with highly mobile fauna, there can be important habitat that would not be used to the extent this criterion is met but is nevertheless important in facilitating viable populations across natural range.

		a. Para (2): requires mapping etc. if it will "help manage specified highly mobile fauna". The purpose of mapping highly mobile fauna area is to manage adverse effects on the fauna, not the fauna themselves. This should be clarified. b. The BCG version of this clause included a statement that "An area identified under this policy is not a significant natural area unless it also meets the criteria in Appendix 1". While this may be self-evident, this direction was important to some BCG members, and its inclusion avoids doubt over the interface between the identification and management of SNAs and highly mobile fauna areas. This is helpful given both apply to Threatened and At-Risk species.	… (5) A highly mobile fauna area identified under this clause is not a SNA unless it also meets the criteria in Appendix 1.
3.21	Needs amendment	Cl 3.21 combines and aligns with the suite of restoration provisions proposed by the BCG and is supported in principle because of its focus on existing habitat - "It is more efficient and cost-effect to maintain existing indigenous ecosystems than to try and create new ecosystems."[59] The important caveat to this is that some ecosystems will need to move or change to persist in a changing climate. This needs to be reflected in cl 3.21. The priorities capture areas that are ecologically most in need of restoration and where gains can be maximised and mean the restoration priorities in policy statements and plans will align with those set at a national level.	Replace existing (1) with: (1) Regional councils must spatially identify in regional policy statements areas for restoration and reconstruction that prioritise the following, with particular priority going to those areas that would support resilience to climate change:

[59] BCG Report at pg. 35.

		The methods for achieving restoration identified at a high level in cl 3.21(3) and (4) are both needed if restoration opportunities are to be maximised. There are two aspects of concern which will comprise effective and efficient restoration at a regional scale: a. The clause is directed at local authorities generally. This means that both regional councils and territorial authorities have to develop provisions focused on priority areas and may do so in a very different way. This risks undermining effective and ecologically resilient restoration at a landscape scale across a region. Identification of priority areas for restoration is a strategic question. It therefore best sits with regional councils. This allocation of responsibility also aligns with a transition to a predominately regionally focused management regime as is anticipated under a new resource management system. District councils can still have some flexibility as to the precise mechanisms for delivering on restoration of those priority areas (e.g., transferrable development rights; standards on activities; conditions). Changes are recommended accordingly. b. Since the BCG's report and the previous draft, the effects of climate change have become increasingly felt. In that context, and given the experience of entities like UNISA, addition of a new para requiring local authorities to consider impacts of climate change when identify where and what areas are prioritised for restoration and enhancement, and when setting standards for that restoration and enhancement. For example, there is little point in restoring an area with its historical cover if that type of indigenous vegetation is not going to be able to withstand the localised changes in climate to come, or in enhancing an area if it is going to be	(a) SNAs whose ecological integrity is degraded: (b) threatened and rare ecosystems representative of naturally occurring and formerly present ecosystems: (c) areas that provide important connectivity or buffering functions: (d) wetlands whose ecological integrity is degraded or that no longer retain their indigenous vegetation or habitat for indigenous fauna: (e) any national priorities for indigenous biodiversity protection. Replace existing (2) with: <u>(2) Local authorities must include objectives, policies, and methods in policy statements and plans to promote restoration or reconstruction of the areas identified under (1),</u>

		inundated. Rather, indigenous vegetation should be supported that will be resilient to and thrive in a changed climate. This will also help with seamless transition of the restoration clauses into a new resource management system, under which it is understood local authorities will have to apply a climate change adaptation lens when preparing regional plans and regional spatial strategies.	and any other area identified as important for maintaining indigenous biodiversity. Retain existing (3) and (4). Add new (5): When preparing the objectives, polices, methods in accordance with this clause, local authorities must provide for resilience to the impacts of climate change of restored or reconstructed areas.
3.22	Needs amendment	This policy is strongly supported in principle. It is ecologically accepted that when ecosystems are reduced to a certain percentage of their original cover that they will be unable to sustain themselves and will enter into rapid decline. The percentage cover at which this decline begins, and so at which it is most effective to begin active intervention, is internationally acknowledged to be 30%, which is why 30% cover is when a land environment falls within the Threatened Land Environment Classification.[60] The BCG recommended requiring local authority action to increase vegetation cover at 10% cover because the advice it received was that this was the figure at which decline became most rapid and complete ecosystem loss most likely.[61]	Insert new definition of non-urban environment as specified in cl 1.6 above. Amend (3)(a) as follows: set a target of at least 10%, and ideally at least 30%, indigenous vegetation cover for any urban or non-urban environment that

[60] Walker et al; *New Zealand's remaining indigenous cover: recent changes and biodiversity protection needs;* Science for Conservation 284, at 2.5.2 and Figure 2. See 2.5.1 for discussion of increased percentage loss if 10% is lost meaning cover goes from 90% to 80% verse if 10% is lost so cover goes from 20% to 10%.
[61] BCG Report pg. 34. See Clarkson et al; *Restoration targets for biodiversity depleted environments in New Zealand;* The Environmental Research Institute University of Waikato, 2018.

		This requirement was focused on urban areas because currently the remaining cover in nearly all of Aotearoa New Zealand's urban environments is below 10%, despite urban environments being home to some of our most vulnerable indigenous biodiversity.[62] As a result, requiring local authority action at 10% cover is supported, but it is noted that the science shows that requiring action when cover has reduced to 20 or 30% would be more consistent with a precautionary approach and more likely to support maintenance of indigenous biodiversity. As drafted, there are some aspects of clause 3.22 that are not clear: a. It is not clear how different "non-urban environments" are to be divided up and identified. For example, the entirety of a region outside of its urban environments could be classified as one non-urban environment. Or, that area could be divided up into multiple non-urban environment units in some way. Ecologically, the best method for dividing the area of a region outside its urban environments into units for the purposes of restoring indigenous cover is to use Land Environments of New Zealand (LENZ). LENZ is an environmental classification that uses climatic and landform factors likely to influence the distribution of species to classify terrestrial landscape into groups with similar environmental conditions and so similar existing and potential vegetation cover. It has been designed to provide for adaptation to climate change. Focusing restoration on LENZ environments (LENZ Level III likely being the most appropriate for this type of activity), means that the full range and diversity of indigenous vegetation would be restored to sustainable levels.	has less than 10% cover of indigenous vegetation Amend (3)(b) as follows: (b) consider setting targets of higher than 10% for urban and non-urban environments that have 10% cover at the commencement date ~~other areas~~, to increase their percentage of indigenous vegetation cover, ideally to 30% or more; and.. Amend (4)(a) as follows: ~~having regard to~~ in order to meet any targets set under subclause (3) by regional councils Add new (5): Local authorities must ensure that where existing indigenous cover is above 10%, or when a target set under subclause (3) is

[62] BCG Report pg. 34.

		It would also be clear and simple to apply given LENZ already exists and existing cover can be identified at a general level used the Land Cover Database. It would also support inter-regional restoration actions as all regions would have a uniform approach to non-urban restoration. b. Para (3)(b) refers to setting a higher than 10% target for "other areas". It is not clear what these other areas are. For example, it could be interpreted to refer to areas within a region that are neither "urban environments" or "non-urban environments", whatever they may be. This clause should apply expressly to urban and non-urban environments that have 10% or greater indigenous cover. c. The focus on 10% risks interpretation that reducing indigenous vegetation cover down to that level is acceptable. This must be avoided and should be made explicit on the face of the policy. Clearing down to 10% cover where existing cover is higher is not consistent with achieving "no reduction in" (maintenance) indigenous biodiversity. This does not mean no clearance can occur. Existing % cover can be maintained through a combination of protecting existing areas, enhancing existing areas, and planting new areas to offset/compensate for cover that is lost. d. Para (4) requires councils to promote the increase in vegetation cover "having regard to" targets set under cl 3.22. This is unacceptable. There is no point in setting targets unless there is a requirement to meet them. If this is not required, it will not happen. This was reflected in the BCG's recommended clause which required objectives, policies, and methods to designed to reached targets.	<u>reached, the % level of cover is retained, through objectives policies and methods in policy statements and plans.</u>
3.23		See comments at Appendix 5 below.	

3.24	Needs amendment	A clause specifying what an assessment of effects must cover as regards effects on indigenous biodiversity is strongly supported. In Forest & Bird's experience assessments of effects are often inadequate and have a tendency to merge different environmental features and effects into a single effects conclusion that downplays specific adverse effects, for example on indigenous biodiversity. For example, an effects assessment may address indigenous biodiversity generally, not the specific indigenous biodiversity present, and may reach an overall conclusion that effects are "no more than minor" despite more significant adverse effects on indigenous biodiversity. This is inappropriate. Lower-level effects on different environmental factors should not be used to mask more significant impacts on indigenous biodiversity where the threshold for and resilience to impacts and change is often low. This is particularly so for Threatened or At-Risk species. At present some aspects of cl 3.24 are unclear or do not properly align with how activities are required to manage adverse effects on indigenous biodiversity. Changes are required to tidy these matters up. a. The first step in undertaking a proper assessment of effects is to identify and describe the indigenous biodiversity values present. This requirement was included in the BCG version of this clause and the previous draft but has been deleted from the exposure NPSIB. It needs to be reinserted. It is not possible to assess effects if one does not know what is being affected. b. Existing (2)(a) requires the ecological report to identify how effects will be managed "using the effects management hierarchy". However, in some situations the effects management does not apply, and avoidance of adverse effects is required – i.e., in SNAs for most activities. Failing to identify this risks confusion over what is required in the best case and	Insert a new cl 3.24(2)(a) above existing (2)(a) as follows: (a) include a description of the site at which the activity is to occur, and of the indigenous biodiversity of the site. Amend existing (2)(a), what would be (2)(b) if the above para is adopted as follows: "include a description of the adverse effects of the proposal on indigenous biodiversity and how those effects will be managed to: • avoid adverse effects where clause 3.10(2) or any other policy statement or plan provision applies that requires avoidance of adverse effects; • ~~using~~ meet the effects management hierarchy where it applies.

		provides an avenue for arguing that the avoid requirement does not apply at consenting stage in the worst case. The para needs to be amended to clarify that a report must show how avoidance has been achieved where this is required. c. Existing paras(2)(f) and (g) require an assessment of any proposed biodiversity offsets or biodiversity compensation. Both require *inter alia* a description "of how the relevant principles" in Appendix 3 or 4 "have been addressed". It is not clear why the word "relevant" is used, nor why they only need to be "addressed". Appendices 3 and 4 are clear that for an action to qualify as a biodiversity offset or biodiversity compensation, they "must" meet all of the principles listed in each Appendix. Using softer language in this clause again risks confusion over application of the principles and creates of an avenue for arguing that all of the principles do not need to be applied. These paras need to be amended to use language that aligns with that in Appendices 3 and 4.	Amend (2)(f)(ii) and (2)(g)(ii) as follows: (2)(f)(ii) description of how the ~~relevant~~ principles in Appendix 3 of the National Policy Statement for Indigenous Biodiversity have been ~~addressed~~ met. (2)(g)(ii) description of how the ~~relevant~~ principles in Appendix 4 of the National Policy Statement for Indigenous Biodiversity have been ~~addressed~~ met.
3.25	Needs amendment	A requirement for local authorities to monitor indigenous biodiversity is supported. Monitoring of indigenous biodiversity outside of SNAs, not just within SNAs is essential for establishing an accurate picture of indigenous biodiversity extent and quality, and losses and gains against that. To that end, the previous draft required monitoring of "the ecological integrity and physical extent of…other areas outside SNAs". This is no longer required. It is acknowledged that this direction was unclear about what "other areas" referred to. This deletion makes monitoring of vegetation cover essential, as this	Amend to include monitoring of a representative sample of indigenous vegetation cover areas that are outside SNAs, and to require monitoring of identified highly mobile fauna habitat areas. It is noted that the BCG gave detailed recommendations relating to achieving consistent

		provides information on the extent of indigenous biodiversity outside SNAs. There is, however, a gap regarding monitoring of ecological integrity (or conditions) outside SNAs. This is currently an area where Aotearoa New Zealand has a dearth of information, and more is needed for improved indigenous biodiversity management. This could be addressed through requiring ongoing monitoring of a representative sample (for example based on LENZ environments) of indigenous cover outside SNAs. Although this will not provide a complete picture, it will help to provide valuable data on the condition of indigenous biodiversity outside SNAs, not just its extent. Currently cl 3.25 does not refer to monitoring of highly mobile fauna habitat. Monitoring of these areas would help to confirm the role they play in a species' lifecycle and inform any management responses. From an efficiency and effectiveness point of view, this could be focused on a representative sample as opposed to every identified area.	and comprehensive monitoring and reporting[63]. Consistent monitoring is essential for providing an accurate national picture of our indigenous biodiversity, and for making informed decisions on controls on human activity. The BCG recommended that Tier 1 and Tier 2 monitoring frameworks are adopted an applied by local authorities, and a series of steps to facilitate this. This does not appear to form part of the draft implementation plan and is not one of the pilot actions. A data platform, as is proposed, is for little us if the data going into it is disjointed and lacks alignment. This gap is a major oversight. Experience shows that if data gaps are not filled, then it is very difficult to take effective action

[63] Chapter 4 Complementary and Supporting Measures Report

			to maintain indigenous biodiversity. Forest & Bird seeks that MFE undertakes the BCG's recommendation 4.1 in the Complementary and Supporting Measures Report.
Part 4			
4.1	Needs amendment	Para (2) requires that changes to policy statements and plans are made to give effect to the exposure NPSIB within 8 years after commencement. However, a variety of other dates apply below. It would be clearer to state the relationship between these provisions.	Amend (2) as follows: Local authorities must publicly notify any changes to their policy statements and plans that are necessary to give effect to this National Policy Statement within 8 years after the commencement date, <u>unless an alternative timeframe applies in clauses 4.2 to 4.4 below.</u>
4.2	Support		
4.3	Support		
4.4	Support		

Appendices			
App 1	Support	Inclusion of nationally consistent significance criteria is strongly supported. Protecting SNAs is a critical part of maintaining indigenous biodiversity for the reasons outlined at cl 3.10. Currently SNA identification criteria vary between regions, although this is improving with second generation RPSs. This results in disjointed identification, with some regions failing to capture areas that are significant because of unduly narrow criteria, or criteria which include human uses factors. The criteria in the exposure NSPIB closely align with those recommended by the BCG. The criteria recommended by the BCG were prepared by Mike Harding, with extensive input from ecologists around the country. They are not too broad or all-encompassing as some advocate groups have suggested. They are based on science and expert opinion about what makes are area if indigenous vegetation or habitat significant in an ecological sense. The question of what SNA identification means where an SNA overlaps with a specific existing use or a desired future use is a management question. These matters should not determine whether an area is identified as an SNA. The exposure NPSIB includes a suite of provisions addressing different existing and future uses, with a variety of management approaches applying for this reason.	
App 2			
App 3	Needs amendment	<u>The risks of biodiversity offsetting and its use internationally</u>	• As set out in discussion column.

		A systematic approach to biodiversity offsetting has not been adopted in Aotearoa New Zealand to date. There has also been little, if any, robust analysis of the success of offsets. Internationally there are some countries or regions with biodiversity offsetting programmes. However, environmental outcomes of offsets are rarely robustly monitored or reported on.[64] Reported outcomes usually use simplistic outcome measures, such as aerial coverage or compliance with permit criteria.[65] Levels of compliance and enforcement with law, policies, and guidance pertaining to biodiversity offsets are low around the world[66] and the majority of measured outcomes fall short of stated objectives[67]. The short point is that biodiversity offsetting is risky for indigenous biodiversity. It has rarely been successful overseas, and the risks of failure are even higher in Aotearoa New Zealand given the unique and vulnerable nature of our indigenous biodiversity. This means that biodiversity offsetting (and biodiversity compensation even more so) must not been seen as a 'go to' if we are to halt and reverse indigenous biodiversity loss. <u>Alignment issues</u> Aquatic offsetting and compensation have been included in the NPSFM. Forest & Bird has submitted on these separately. The principles applying under the NPSFM are different to the principles in the exposure NPSIB. It is not clear why this is the case. This difference risks undermining integrated management as between freshwater and terrestrial environments.	

[64] Bull et al. 2013; Becomes et al. 2019; Josephsson et al. 2021

[65] Marshall et al. 2020

[66] e.g., Fox & Nino-Murcia 2005 (USA); Quigley & Harper 2006a; Clare & Krogman 2013; Poulin et al. 2016 (Canada); Brownlie et al. 2017 (South Africa); May et al. 2018; Australian Auditor-General 2020 (Australia)

[67] e.g., Quigley & Harper 2006b; Poulin et al. 2016; May et al. 2017; Thorn et al. 2018; Gibbons et al. 2018; zu Ermgassen et al. 2019

		Issues with principles Changes are required to the principles to address issues discussed earlier in this submission and to ensure they align with best practice offsetting principles. Principles not commented on are supported. *Effects management hierarchy* Consequential amendment required to delete minimise and add mitigate. *Limits to offsetting* The consequence of the risks associated with offsetting is that the limits on when biodiversity offsetting is available – so the situations where it cannot be used and the activity causing residual adverse effects must be avoided – must be stated up front, not buried within an appendix. This is particularly so if there are no longer to be a category of SNAs in which all activities must avoid specified adverse effects. If this is done, then principle 2 should be deleted from Appendix 3. If this is not done, then the principle needs to be retained and amended so that its intention is clear. Instead of referring to appropriateness it should simply state: "Biodiversity offsetting is not available, and the activity causing the residual adverse effects must be avoided where:…" *Additionality* The wording of this suggests that the relevant gains are limited only to those that are additional to what a consent applicant has undertaken in accordance with previous steps in the effects management hierarchy. In fact, additionality requires that the offset is additional to any other gains – whether undertaken by the	

		applicant or any other party (e.g., the Department of Conservation as part of work unrelated to the proposal). The principle therefore needs to be amended as follows: Additionality: Biodiversity compensation achieves gains in indigenous biodiversity that are above and beyond gains that would have occurred in the absence of the compensation, ~~such as~~ including gains that are additional to any avoidance, remediation, or mitigation undertaken in relation to the adverse effects of the activity, or any actions by independent third parties such as the Department of Conservation.[68] *Time lags* This principle is supported in principle, but a requirement to "minimise" delay between loss and gains is unclear and inadequate to ensure good indigenous biodiversity outcomes. There will be a plethora of views about when time lags have been "minimised" or minimised enough. Ecologically, the longer the time lag between the loss and gains the less likely the outcome will be positive of achieve a net gain. In addition, delay increases risk that the offset will not be provided at all. Ideally and offset would be initiated before the loss occurs so that it gets a 'head start'. Sometimes, however, this may not be feasible, for example if the offset site would be impacted by the activity it is offsetting. The Otago Regional Policy Statement provides one way of overcoming these issues but avoiding the uncertainty of a principle requiring minimisation. It requires that the offset be time delay is the least necessary to deliver the best	

[68] This wording is slightly different to that sought in relation to the equivalent principle in Forst & Bird's submission on the NPSFM. This is because of the different way in which the principle is expressed as between the two documents. The revised wording is intended to achieve the same intent in both documents. The amendments sought in Forest & Bird's NPSFM submission would also be acceptable here.

		possible biodiversity outcome, or at most the term of the resource consent. This approach has merit but misses that some resource consents will not have a specific term. As such, a final backstop is required. Against that background, the following principle is sought: Time lags: The delay between loss of indigenous biodiversity at the impact site and gain or maturity of indigenous biodiversity at the compensation site is ~~minimised~~ the shortest necessary to achieve the best possible biodiversity outcome and must not exceed the consent period or 35 years whichever is shorter.[69] Implementation These issues also mean that significant implementation assistance is required if biodiversity offsetting is going to be a key effects management tool. Forest & Bird was disappointed to see that a biobank, or similar tool, has not been included as one of the implementation piolets by MFE. If biodiversity offsetting is to continue to be an important tool under a new resource management regime, then getting the practical structures in place now to support its use is imperative. Principles as standards The statement that the principles in Appendix 3 "represent a standard for biodiversity offsetting and must be complied with for an action to qualify as a biodiversity offset" is strongly supported. It is essential that offsets are held to high standards, and that it is clear that an action that does not meet the principles does not qualify. As noted at cl 1.5, this should also be made clear as part of defining the effects management hierarchy to avoid argument that an action that	

[69] Same point applies here as addressed at footnote 68 above.

		does not meet the biodiversity offsetting (or biodiversity compensation) principles can nevertheless be considered.	
App 4	Oppose, but if retained needs amendment	The discussion above about risks associated with biodiversity offsetting and poor experiences and outcomes internationally applies to biodiversity compensation to an even greater extent. This is because biodiversity compensation has not been subject to robust ecological principles. This has not only meant that compensation can under-deliver on biodiversity gains on the ground, but that losses are compensated for by paying for a PhD or funding a community facility. This has no tangible positive effect on indigenous biodiversity and will inevitably lead to a draw down in indigenous biodiversity. This is not consistent with maintaining indigenous biodiversity. For these reasons Forest & Bird's primary position is that biodiversity compensation should not be provided for. Applicants should only have recourse to biodiversity offsetting and if that is not possible, then the activity or part of the activity having the relevant residual adverse effects must not be undertaken. If, however, biodiversity compensation is to be retained, then to be consistent with maintaining – or allowing no reduction in – indigenous biodiversity it is essential that compensation proposals achieve no net loss of indigenous biodiversity. If biodiversity compensation does not have to achieve no net loss, maintenance of indigenous biodiversity will, by definition, not be achieved. It appears from principle 3 that this is the intent. Although as drafted principle 3 is unclear. It says that the "values to be lost…are addressed by positive effects…that outweigh the adverse effects". It would be clearer to apply the no net loss principle with which people are familiar, and which is clear as to its requirements.	Amendments sought: • Consequential amendment to principle 1 to delete minimise, and refer instead to avoid, remedy, and mitigate. • Delete principle 2 and move limits to biodiversity offsetting up into effects management hierarchy. • Amend principle 3 as follows: Scale of biodiversity compensation: There must be at least no net loss of indigenous biodiversity values as between the values lost through the activity and the values gained through the biodiversity compensation. ~~values to be lost through the activity to which the biodiversity compensation~~

		Equivalent amendments are also required to the Appendix 4 principles as sought to be made to the equivalent Appendix 3 principle.	~~applies are addressed by positive effects to indigenous biodiversity, (including when indigenous species depend on introduced species for their persistence), that outweigh the adverse effects on indigenous biodiversity.~~ Equivalent amendments to the other Appendix 4 principles as sought to be made to the equivalent Appendix 3 principle.
App 5	Support	Regional biodiversity strategies are supported. Appendix 5 is substantially as recommended by the BCG. Alignment between regional biodiversity strategies and regional spatial strategies is essential for effective implementation. See discussion in section 2 above.	