



# RPS Change 1 - Hearing Stream 7 Indigenous Ecosystems

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# ✱ Should Change 1 give effect to the NPS-IB?

## Key issues:

- NPS-IB came into effect in August 2023 after Change 1 notified
- Mixed views from submitters – align with gazetted NPS-IB v delay until a future variation or RPS change

## Analysis:

- Clear direction in the RMA and NPS-IB to give effect to the NPS-IB “*as soon as reasonably practicable*”
- Change 1 sought to align with NPS-IB exposure draft
- Therefore, there is scope within proposed provisions in Change 1 and submissions to give effect to the NPS-IB
- Many of the NPS-IB provisions are highly directive and there is limited discretion in how they are implemented
- Giving effect to NPS-IB provisions also gives effect to key provisions in the RMA relating to indigenous biodiversity (e.g. section 6(c) and 6(e))

## Recs:

- Give effect to certain NPS-IB provisions based on guiding principles as detailed in Appendix 3 and within the section 42A report

# \* What is the appropriate approach to give effect to the NPS-IB?

## Key issues:

- Multiple ways to give effect to NPS and highly divergent views on this
- RPS should generally seek to add regional context/specificity and address conflicts when giving effect to NPS (*Port Otago*)
- However, there is limited discretion in how highly directive NPS-IB provisions such as Clause 3.10 and 3.11 are given effect to RPS
- Unclear how notified Policy 24 interacts with, and give effect to, higher order NPS

## Analysis:

- Policy 24 needs to explicitly recognise and give effect to NPS provisions relating to protection of significant indigenous biodiversity
- Three main drafting approaches (stay silent, cross-reference, repeat with appropriate modifications) – each with pros and cons
- No right or wrong approach – rather trade-offs to consider in terms of efficiency, certainty, useability and longevity

## Recs:

- Recommend RPS repeat highly directive NPS-IB provisions
- Avoids the need to multiple documents (that may soon be out-of-date), can align terminology, provide more certainty and longevity on the provisions that apply in the region
- New Policy 24B and Policy 24C that apply in territorial and coastal environment, new definitions and appendices

# ✱ Policy 24A and Appendix 1A – offsetting and compensation

## Key issues:

- Policy intent not that clear in notified amendments to Policy 24
- Unclear how other NPS-IB principles for offsetting and compensation are to be considered
- Concerns that list of ecosystems and species in Appendix 1 is extensive, overly restrictive, static, will preclude offsetting in the region
- Concerns that 10% net gain target unworkable and not supported by higher order documents

## Analysis:

- The limits in Policy 24A and Appendix 1A an effective way to give effect to the corresponding principles in the NPS-IB (*and NPS-FM, BBOP, NRP*) as when offsetting or compensation is not appropriate due:
  - The vulnerability or irreplaceability of the affected biodiversity
  - No technically feasible methods to secure gain within acceptable timeframes
- A conservative approach to offsetting/achieving net gain appropriate but a strict 10% net gain requirement could be problematic

## Recs:

- Split out policy direction – Policy 24 v 24A
- Update list of ecosystems and species and clarify it not exhaustive list
- Soften the target to “*at least net gain and preferably 10% or greater*”

# \* Managing effects on biodiversity in the coastal environment

## Key issues:

- NPS-IB and NZCPS overlap in the coastal environment above MHWS
- NPS-IB provides a clear pathway/effects management hierarchy for 'specified infrastructure' v NZCPS Policy 11 is a hard 'avoidance policy'

## Analysis:

- Acknowledge the operational and functional requirements for regionally significant infrastructure to be in particular locations
- However, the RPS must give effect to the clear direction in:
  - Policy 11 of the NZCPS to avoid certain adverse effects
  - Clause 1.4(2) of the NPS-IB that the NZCPS prevails where there is conflict
- "Avoid" means "prevent the occurrence of" the adverse effects listed in NZCPS Policy 11 whereas offsetting is a positive effect to address residual adverse effects that cannot be avoided

## Recs:

- Retain direction that offsetting not allowed where it affects species and ecosystems that meet the criteria in Policy 11 of the NZCPS
- Explanation to Policy 24C make it clear it prevails over Policy 24B where there is conflict in the terrestrial coastal environment

# Managing effects of REG and ET activities

## **Key issues:**

- 'Carve out' in Clause 1.3(3) of the NPS-IB for REG and ET activities has created a national policy gap
- Specific recognition of REG and ET activities is required because of importance of these activities in responding to the climate crisis
- Govt signalled strong commitment to double renewable electricity generation output but timing and nature of NPS amendments uncertain

## **Analysis:**

- Policy 24 could be more restrictive for REG and ET activities than other 'specified infrastructure' which not intent
- NPS-IB has created a gap in respect of REG and ET activities and significant biodiversity values that the RPS need to address to meet obligations under section 6(c) of the RMA
- A specific and more enabling effects management framework is appropriate for REG and ET activities -

## **Recs:**

- New Policy 24D specific to REG and ET activities which is consistent with recent proposed NPS amendments (gateway tests and an effects management hierarchy)