

WAIMAKARIRI DISTRICT PLAN REVIEW

MEMORANDUM TO HEARINGS PANEL

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DATE: 25 September 2023

MEMO TO: Proposed District Plan Hearings Panel

FROM: Shelley Milosavljevic – Senior Policy Planner (Waimakariri District Council)

SUBJECT: Giving effect to the National Policy Statement for Indigenous Biodiversity

Purpose of memo

1. The National Policy Statement for Indigenous Biodiversity (NPSIB) came into force on 4 August 2023. Section 75(3)(a) requires District Plans to give effect to a national policy statement. As requested by the Hearings Panel via Minute 6 (dated 21 July 2023), this memo sets out:
 - a. Council's understanding of the requirements of the NPSIB; and
 - b. Council's intentions to proceed in respect to those requirements.

Requirements of NPSIB

2. The purpose of the NPSIB is to protect and maintain indigenous biodiversity so there is '*at least no overall loss*'.
3. Overall, the NPSIB requires:
 - a. mandatory and consistent identification of Significant Natural Areas (SNAs) using its specific ecological criteria;
 - b. management of adverse effects from development or activities on SNAs;
 - c. the maintenance of indigenous biodiversity outside of SNAs;
 - d. consideration of highly mobile fauna habitat;
 - e. promotion of restoration of certain priority areas;
 - f. promotion of increased indigenous vegetation cover in urban and non-urban environments;
 - g. Council to work in partnership with tangata whenua to identify ecological taonga; and
 - h. Council to recognise the role of tangata whenua as kaitiaki, and work with landowners early in the process of identifying SNAs and recognise the role and efforts of landowners as stewards of biodiversity.
4. The NPSIB contains one objective and 17 policies, which the Proposed District Plan (PDP) must give effect to. It includes a detailed implementation framework that sets out how this shall be achieved. It also contains a number of defined terms, ecological criteria for identifying SNAs, a biodiversity offsetting and compensation framework, and a list of specified highly mobile fauna.
5. In terms of timing, the NPSIB must be given effect to '*as soon as reasonably practicable*' and within:
 - a. 4 years for reassessments of existing SNAs against the NPSIB SNA ecological criteria (August 2027);

- b. 5 years for plan changes relating to SNAs (August 2028); and
- c. 8 years for plan changes relating to non-SNA requirements (August 2031).

Council's intentions to proceed in respect to NPSIB requirements

- 6. The Ecosystems and Indigenous Biodiversity (ECO) chapter provisions were conceptually aligned with Draft NPSIB (November 2019 version). The NPSIB Exposure Draft was released in June 2022 thus after notification of the PDP.
- 7. The NPSIB primarily impacts on the ECO chapter of the PDP. The ECO chapter¹ hearing is scheduled for Hearing Stream 11 in March 2024. The NPSIB will also affect the SD-O1 of the Strategic Directions chapter, which was heard during Hearing Stream 1 & 2 in May 2023, and potentially other chapters.
- 8. I consider that the NPSIB should be given effect to to the extent possible within scope of submissions via the ECO hearing process and this will include consideration of consequential amendments to other chapters, including Strategic Directions.
- 9. There are 92 mapped SNAs listed in the PDP. I am also aware that there are other areas that may qualify as SNAs but have not had a level of assessment sufficient to consider for listing in the PDP. There are some submissions that request more SNAs to be listed in general, however they do not relate to specific sites. I consider that these submissions would not provide sufficient scope to add additional SNAs via the ECO chapter hearing process, and to do so would give rise to potential procedural unfairness and natural justice issues in terms of new SNA landowners not being able to participate in the PDP review process if not existing submitters.
- 10. In my opinion, undertaking a variation process would have other issues on the PDP review process such as timing and resourcing impacts. Therefore, I consider listing of new SNAs, along with outstanding amendments required to give effect to the NPSIB that could not occur within the hearing process, will need to be progressed via a plan change.
- 11. In terms of the timing of a plan change, a range of factors need to be considered. Clause 25(4) of Schedule 1 of the RMA states that if the substance of a plan change has been considered and given effect to, or rejected, within the last two years of a plan becoming operative, Council may reject it. Therefore, I consider this two-year moratorium may not apply in the context of a Council plan change to give effect to the balance of the NPSIB requirements. However, if legal advice concluded clause 25(1) did apply, Council could either apply for a waiver or await the two-year period (which would be early 2027 at the earliest, subject to appeals).
- 12. It is noted that the timing of this process will be potentially occur in parallel with transitioning into the Natural and Built Environments Act (NBA). However, as the substance of the NPSIB is incorporated into the NBA via Significant Biodiversity Area (SBA) requirements, any progress with identifying new SNAs/SBAs, or amendments to provisions, would be relatively transferable and therefore useful going forward.

¹ The National Planning Standards state that if a District Plan addresses matters relating to SNAs, maintenance of biodiversity, or intrinsic values of ecosystems and indigenous biodiversity, they must be located within the ECO chapter.