

SUBMISSION ON

the draft National Policy

Statement for Indigenous

Biodiversity

March 2020

TO: Ministry for the Environment

NAME OF SUBMITTER: Horticulture New Zealand



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Introduction

Horticulture New Zealand (HortNZ) thanks Ministry for the Environment (MfE) for the opportunity to submit on the draft National Policy Statement for Indigenous Biodiversity and welcomes any opportunity to work with MfE and to discuss our submission.

HortNZ could not gain an advantage in trade competition through this submission.

HortNZ wishes to be heard in support of our submission and would be prepared to consider presenting our submission in a joint case with others making a similar submission at any hearing.

The details of HortNZ's submission and decisions we are seeking from MfE are set out below.

Background to HortNZ

HortNZ was established on 1 December 2005, combining the New Zealand Vegetable and Potato Growers' and New Zealand Fruitgrowers' and New Zealand Berryfruit Growers Federations.

HortNZ advocates for and represents the interests of 5000 commercial fruit and vegetable growers in New Zealand, who grow around 100 different crop types and employ over 60,000 workers. Land under horticultural crop cultivation in New Zealand is calculated to be approximately 120,000 hectares.

The horticulture industry value is \$5.7 billion and is broken down as follows:

Industry value	\$5.7bn
Fruit exports	\$2.82bn
Vegetable exports	\$0.62bn
Total exports	\$3.44bn
Fruit domestic	\$0.97bn
Vegetable domestic	\$1.27bn
Total domestic	\$2.24bn

For the first time New Zealand's total horticultural produce exports in 2017 exceeded \$3.44bn Free On Board value, 83% higher than a decade before.

It should also be acknowledged that it is not just the economic benefits associated with horticultural production that are important. The rural economy supports rural communities and rural production defines much of the rural landscape. Food production values provide a platform for long term sustainability of communities, through the provision of food security.

HortNZ's mission is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.

HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

The principles that HortNZ considers in assessing the implementation of the RMA include:

- The effects based purpose of the RMA;
- Non-regulatory methods should be employed by councils;
- Regulation should impact fairly on the whole community, make sense in practice, and be developed in full consultation with those affected by it;
- Early consultation of land users in plan preparation;
- Ensuring that RMA plans work in the growers interests both in an environmental and sustainable economic production sense.

SUBMISSION

EXECUTIVE SUMMARY

- We support the intent of the draft NPSIB and the need to improve management of New Zealand's biodiversity.
- We believe that the long-term management of New Zealand's biodiversity requires a national strategic planning approach. Utilising other legislation, such as the Local Government Act 2002 (LGA) will enable a broader range of mechanisms for achieving the vision of the NPSIB. It will also address inequitable issues arising from lack of compensation where private land is rendered economically unfeasible as a result of the NPSIB.
- We believe that non-regulatory measures are critical to the success of the NPSIB and support the following actions:
 - a) Ensuring sufficient information, advice, knowledge and support is provided to landowners, to enable landowners to incorporate biodiversity into their day to day farm management.
 - b) Ensuring targeted monitoring and reporting of biodiversity outcomes to provide appropriate tracking of success/failure of initiatives/progress.
 - c) Ensuring sufficient funding and resources are available upon request from councils, to enable them to meet obligations and provide support for landowners under the NPS-IB.
 - d) Ensuring appropriate and sufficient funding is available such that landowner facing entities, for example the QEII National Trust and the NZ Landcare Trust can respond to the demand from private landowners in regard to covenanting, and community-level interventions/approaches.
 - e) The establishment of a contestable national biodiversity fund for landowners/community groups to apply for assistance in relation to costs associated with preservation of biodiversity.
 - f) Carbon credits for the climate change mitigation provided by areas of significant biodiversity.
 - g) Consideration of how tax incentives could be provided to encourage, or remove barriers to, expenses associated with private biodiversity efforts.
 - h) Amendments, funding or otherwise clarification on the Local Government Act regarding rates relief for QEII covenanted land.
- A National Policy Statement provides consistency in interpretation and application of the RMA in relation to a particular topic. Our submission identifies a number of areas where inconsistency, confusion and lack of direction or quantification are more likely to result in extensive litigation and delays.
- As currently drafted, the NPSIB is a catch-all approach. Any and all indigenous vegetation or habitat for indigenous fauna will be identified as a SNA under Appendix

1. Further, every activity is subject to assessment and required to avoid adverse effects in the first instance. This is the case regardless of location in relation to a SNA, or the scale and relevance of the activity's effects. This approach will fail to sustainably manage and protect significant biodiversity values. Resources and efforts need to be prioritised appropriately and partnerships and incentives are more likely to realise biodiversity gains.

- A lot of good work towards improving biodiversity has already been undertaken by rural private landowners and primary production sectors. This includes the validation and uptake of good management practices to manage environmental risk and, in many instances, contribute to the enhancement and wellbeing of indigenous biodiversity. It is fundamental that the NPSIB does not impinge on the management, maintenance and function of good management practices such as sediment ponds, buffers or riparian planting. Farm Environment Plans should be considered as a valid means of demonstrating adequate management and enhancement of biodiversity values.
- Highly productive land is a finite resource and is critical for meeting food supply demands now and into the future. The use of such land should not be restricted or limited by the NPSIB.

INTRODUCTION

HortNZ is active in many resource management planning processes around the country, at a district, regional and national level. To provide context to the commentary we provide below on the questions posed on the issues and options paper, the following is an overview of the key policy issues HortNZ is involved with.

- Current projections around New Zealand's expected population increase and annual food volumes available for consumption show that domestic vegetable supply will not be able to sustain our future population consumption needs. Reasonably priced healthy food is essential for human health. Water and suitable soil are essential for the production of food.
- Good horticultural land is characterised by a range of factors other than just soil quality including, favourable climate for the crop, access to water, a lack of reverse sensitivity constraints, access to energy for hothouses, and access to post-harvest processing facilities and transport routes.
- Highly productive land is a finite resource. Once taken out of productive use and developed for other urban type land uses the resource is effectively lost. Avoiding this 'sterilisation' of productive land is HortNZ's key policy focus, and as such primary planning issues are:
 - a) Recognising nationally significant rural land;
 - b) Providing for regionally significant rural production;
 - c) Achieving economic development targets;
 - d) Protecting food supply; and
 - e) Providing for post-harvest production.

- HortNZ have experienced across multiple plans, failures in providing for vegetable production and low intensity horticulture; particularly, as they are a very different farming systems to pastoral farming. This is often misunderstood.

Key considerations for horticulture (and threats to food production) in a resource management context include water supply, land supply, access to infrastructure, regulatory regime, reverse sensitivity, biosecurity and access to labour. The most relevant to this submission are:

- Regulatory regime – the regulatory regime must be designed to avoid unreasonable costs and delays in undertaking rural production activities.
- Biosecurity – policy to manage threats must be clear, activity placement must be cognisant of biosecurity issues
- Land supply – which is affected by changes to the rural urban boundary and land fragmentation. Access to the land resource is paramount for the horticultural sector. The best land (including north facing and frost-free high production land), a finite resource, is being lost to urbanisation. Increasingly, access to and use of land is constrained by overly restrictive regulatory regimes.

COMMENTARY ON KEY ISSUES:

INTEGRATED MANAGEMENT.

Huti Te Rito

The fundamental concept underpinning Huti Te Rito is the interconnectedness of the environment and communities. Key to this is the inclusiveness of recognising communities as a whole. HortNZ supports explicit provision made for tangata whenua in the NPS. However, the development and draft version of the NPSIB lacks representation of the wider community.

There is a distinct lack of incentive for landowners to continue, or take up, voluntary restoration projects on their properties. Many growers are already undertaking voluntary projects with no fiscal or material benefit. The planting and maintenance of these areas can be extremely costly over time – in terms of time, money and valuable land space.

As currently drafted, the NPSIB is likely to identify all indigenous vegetation and habitats as significant and being subject to additional assessment and regulation. This does not recognise the great work already undertaken towards restoring biodiversity. Rather this approach appears to penalise those efforts. For landowners and communities to actively recognise their roles as stewards and kaitiaki, the NPS needs stronger direction on, and provision for, Council's to provide some relief where SNA's are identified on private land.

HortNZ was not represented in the Collaborative Group referenced in the discussion document. Particularly in recent years, the horticultural community has been extremely active in both central and local government processes, with a primary focus being on securing New Zealand's domestic food supply now and into the future. HortNZ supports recognition of the interconnectedness of the environment and communities as this is fundamental to the long-term supply of fruit and vegetables. However, as currently presented, the draft NPSIB is unlikely to support the long-term relationship between the environment and communities.

Strategic planning

We support the inclusion of requirements for Regional biodiversity strategies and a monitoring action plan but believe stronger references to a higher-level strategic planning approach are required to ensure long-term success.

Strategic Plans under the Local Government Act 2002 (LGA) provide a means of achieving this. The Strategic Plans enable councils to identify a broad range of regulatory and non-regulatory mechanisms for achieving the vision of the NPSIB. Elements from the strategic plan such as policies, limits and rules would be implemented through the RMA process. Other elements could be directed through Action Plans. Using the LGA provisions enables councils to direct funding towards actions.

Strengthening the relationships to other legislation and better enabling non-regulatory mechanisms is more aligned with the integrated and holistic approach envisioned by Hutia Te Rito. A broader range of tools is more likely to promote partnerships, enable the role of Maori as kaitiaki and encourage the ethic of stewardship.

NPS alignment

We are unclear how the draft NPSIB and the draft National Policy Statement on Highly Productive Land (NPSHPL) work together. In particular, how the balance would be managed if highly productive land was identified as a SNA or as a buffer or connection.

We acknowledge that the intent of the NPSHPL is not to provide total protection of highly productive land. However, the provisions as proposed in the draft NPSIB could so limit the use and development of highly productive land such that it would not be feasible for commercial food production.

The *Discussion Document on a Proposed National Policy Statement for highly productive land* notes that “the value of this land for primary production is often given inadequate consideration, with more weight generally given to other matters and priorities”. We acknowledge the fundamental importance of indigenous biodiversity but believe this needs to be balanced in recognition of the finite nature of highly productive land and the need to secure food supplies now and in the future,

Recommendation

- Use the strategic planning provisions under the LGA to establish a Hutua Te Rito strategic plan.
- Provide clarification or direction on the relationship between the draft NPSIB and proposed NPSHPL.
- Insert a new policy to recognise Objective 6 in its entirety, particularly to encourage landowners and communities in recognising their role as stewards and kaitiaki.

IMPLEMENTATION

Significant Natural Areas

As currently drafted, every activity regardless of extent of adverse effects, will require assessment and every segment of indigenous vegetation and habitat will be classified as a SNA.

We accept and support the need to collectively do better in the management of New Zealand’s biodiversity. However, the overall message of the NPSIB is that all of our biodiversity is in crisis. In our view this isn’t matched by the governments reporting, and risks undermining the areas where biodiversity is being well managed.

We cannot save everything, everywhere, through regulation, and nor should we try to. There must be appropriate prioritisation of resources and efforts. If the criteria for SNA's is set too broadly, there will be failures in prioritising, resulting in perverse outcomes for both New Zealand's agricultural community and biodiversity.

The criteria for identifying SNA's is all encompassing. As currently drafted, it appears that only one criterion from any one attribute is required for an SNA to be declared. In addition, the "space" providing a buffer or connectivity for the core ecological value is deemed part of the SNA. This would mean that every activity regardless of scale or relevance, would be required to provide an assessment of effects and would be required to avoid adverse effects in the first instance. Such as outcome would have significant cost to landowners, communities and councils. It would be unviable for many horticultural operations to continue, and with insufficient resources, capacity and capability across councils the objectives of the NPSIB would fail.

In addition, we are concerned that as currently defined and described in the criteria, horticultural land, or part of, could be identified as part of an SNA. Connections and buffers are given the same protection as the core ecological values identified in the SNA. Accordingly, any normal horticultural practice that would otherwise be permitted, where located on land identified as a buffer or connection, will require consent. The likely outcome is that cultivation will no longer be feasible.

Horticulture is limited in where it can be located for a number of reasons including soil quality, water access, topography, climate and access to labour, market and physical infrastructure. The finite availability of suitable land means relocation is unlikely and the horticultural activity will either cease completely impacting domestic food supply. Or cultivation will need to be intensified on another existing site resulting in adverse effects on other aspects of the environment.

Compensation

Existing case law indicates compensation provided for under section 85 of the RMA is unlikely to be available where existing or practically achievable alternative land use is rendered economically unfeasible as a result of biodiversity regulations. Where existing land use is no longer economically feasible, fair compensation should be offered or land purchased. Failure to do so is inequitable. It is also a disincentive to landowners to engage with biodiversity processes in a willing manner.

Where private land is rendered economically unfeasible as a result of implementation of the NPSIB, we believe additional compensation should be made available beyond that currently provided for.

Regulatory and non-regulatory methods

We support Objective 6 which recognises the role of people, communities and tangata whenua as stewards and kaitiaki of indigenous biodiversity while providing for their economic, social and cultural wellbeing..

However, as drafted the emphasis is on the use of regulatory tools to achieve targets and outcomes. This places the burden of costs associated with implementation solely on local councils, communities and landowners. If the preservation of indigenous biodiversity is of national significance, then the NPS should provide a means of sharing costs and obligations equitably and fairly.

We believe that partnerships with landowners and relevant support entities will be crucial for New Zealand's biodiversity long-term. We support the measures recommended in the BCG's report 'Complementary and Supporting Measures for Indigenous Biodiversity' and support the following actions:

- Ensuring sufficient information, advice, knowledge and support is provided to landowners, to enable landowners to incorporate biodiversity into their day to day farm management.
- Ensuring targeted monitoring and reporting of biodiversity outcomes to provide appropriate tracking of success/failure of initiatives/progress.
- Ensuring sufficient funding and resources are available upon request from councils, to enable them to meet obligations and provide support for landowners under the NPS-IB.
- Ensuring appropriate and sufficient funding is available such that landowner facing entities, for example the QEII National Trust and the NZ Landcare Trust can respond to the demand from private landowners in regard to covenanting, and community-level interventions/approaches.
- The establishment of a contestable national biodiversity fund for landowners/community groups to apply for assistance in relation to costs associated with preservation of biodiversity.
- Carbon credits for the climate change mitigation provided by areas of significant biodiversity.
- Consideration of how tax incentives could be provided to encourage, or remove barriers to, expenses associated with private biodiversity efforts.
- Amendments, funding or otherwise clarification on the Local Government Act regarding rates relief for QEII covenanted land.

Restoration and enhancement

We believe that non-regulatory measures would be more effective in achieving restoration and enhancement of biodiversity, including the 10% target for increasing vegetation coverage. As the NPSIB is currently drafted, the consenting process is the primary means of achieving specified targets and restoration and enhancement goals. There are a number of issues relating to a regulatory only approach in particular;

- It fails in harbouring a relationship between landowners, communities and the environment, as it imposes action and limits flexibility rather than encouraging initiatives
- As every activity or consent is subject to an assessment for indigenous biodiversity, consent conditions are likely to be attached to activities where potential adverse effects have little, or no, relevance to the indigenous biodiversity to which the NPSIB applies.

The latter issue is of particular concern. Consents to take water is one example as these applications and the potential effects are managed under the NPSFM. While the NPSIB is clear that water-based biodiversity is excluded from the NPS, the all-encompassing

“subdivision, use and development” will result in such activities being subject to clause 3.16(6). The misapplication of such conditions is not uncommon.

In Hawkes Bay, HortNZ is involved in a case where riparian restoration conditions are being tied to consents to take water. However, the effects being managed by the restoration conditions are from land use activities rather than the water use activities. Given that water consents make up the majority of consent applications in the rural area, these applications are being unfairly targeted.

Another common example is the requirement of vegetation planting for buildings associated with farming operations. Such development in rural areas is an anticipated part of rural character and amenity and should not be used as a means to achieve NPSIB targets and thresholds.

We believe that restoration and enhancement goals, including the 10% coverage target, would be better achieved through non-regulatory means, such as those listed above. Where regulatory measures are used, we believe more direction and clarity should be provided around the type of consents and activities to which these goals can apply.

Farm Environment Plans (FEPs)

FEPs are a recognised tool for managing environmental risk. The FEP enables farmers to identify risks and corresponding actions to avoid or manage that risk. For the horticulture sector, the actions identified must align with the good management practices (GMP) outlined in validated codes of practice. The FEP is then audited by NZGAP to ensure actions are being implemented appropriately. The FEP template contains a biodiversity section. Risks to biodiversity are managed and planting can be a GMP in appropriate instances.

Providing an exclusion for primary production activities with a FEP audited by a recognised auditor or organisation (such as NZGAP), could be a way forward in terms of enabling productivity while meeting the vision of the NPSIB. FEPs are “live” documents and need to be flexible to allow rapid response to the environment and to crop requirements. FEP’s cannot therefore be used as a regulatory tool, tied to resource consents and consent conditions. However, some regional councils have started requiring FEP’s as an activity standard. HortNZ supports this approach.

HortNZ has been involved in consultation with central government, along with other primary industries, around the national use of FEP’s. We understand that it is likely that FEPs will become mandatory.

Restoration and good management practice (GMP)

HortNZ supports Clause 3.9(4)(d) as it is important to recognise the difference between infrastructure that supports GMP and restoration. For instance, where appropriate, riparian or buffer planting may be identified as a suitable GMP to manage water quality, sediment or wind. We support recognition that the primary function of that planting is as infrastructure and that the maintenance/management of that infrastructure is a priority over the targets of the NPSIB.

However, we feel this clause would be enhanced to recognise changes in practice and technology. Where technology or practices improve, that riparian/buffer planting may no longer be the most efficient use of land and may need to be removed. This is particularly important on HPL.

Recommendation

- Provide clarification on the application of Appendix 1
- Provide direction on the application of Appendix 2
- Exclude horticultural land from the definition of buffer and connectivity
- Provision for additional compensation should be developed in instances where land is rendered economically unfeasible for existing land use as a result of biodiversity regulation, beyond that provided for under section 85 of the RMA.

- Adopt the non-regulatory measures outlined in the CBG report and listed above
- Delete Clause 3.16(6)
- Provide direction on how regional councils should define rural and urban areas
- Provide direction on how regional councils should calculate an appropriate percentage to increase indigenous vegetation in any given area.
- Provide an exclusion for growers with a FEP audited by NZGAP.
- Amend Clause 3.9(4)(d) to recognise improvements in technology and practices

MANAGING EFFECTS ON GEOTHERMAL ECOSYSTEMS

The discussion document includes options for the management of geothermal systems, noting that these would likely be identified as high-value SNAs, resulting in little or no new development opportunities. HortNZ has recently submitted on Ministry of Business, Innovation and Employment's consultation on the 'Accelerating renewable energy and energy efficiency' discussion document. We note that this document identifies geothermal direct heat use as key strategic opportunities for reducing energy-related emissions in a cost-effective manner and discusses options to:

- Develop markets for bioenergy and direct geothermal use and barriers to direct geothermal use
- Support direct use of geothermal heat and seeks feedback on how the Government can how can government best support direct use of geothermal heat
- Amend the NPSREG to provide stronger direction on the national importance of renewables

It is crucial that the options being considered in the draft NPSIB consider this wider context and how any proposed provisions within the NPSIB could limit not only geothermal electricity generation but also direct use of geothermal heat and more broadly emission reduction initiatives. In a horticultural context, this is relevant to the covered crop (greenhouse) industry which requires process heat.

HortNZ's Submissions on the Draft National Policy Statement for Indigenous Biodiversity

Sub pt	Plan provision	Support/Oppose	Reason	Decision Sought
1	Definition – buffer	Oppose in part	<p>As drafted, this could apply to land or waterbody adjoining or containing a “core area of ecological value”. Under draft Appendix 1, these buffer areas are identifiable as part of an SNA.</p> <p>We would oppose the identification of horticultural land, or highly productive land, as a buffer area or as part of an SNA. If such land was subject to additional rules as a buffer or an SNA, this would restrict the use of that land to the point that cultivation would not be practicably or financially feasible. This in turn would have significant impacts on the ability of New Zealand to meet current and projected demands on food supply.</p>	Amend to exclude land used for horticulture.
2	Definition - connectivity	Oppose in part	<p>Under draft Appendix 1, areas providing connections are identifiable as part of an SNA.</p> <p>We would oppose the identification of horticultural land, or highly productive land, as a connection area or as part of an SNA. Inclusion would restrict the use of that land to the point that cultivation would not be practicably or financially feasible. This in turn would have significant impacts on the ability of New Zealand to meet current and projected demands on food supply.</p>	Amend to exclude land used for horticulture.
3	Definition – Effects management hierarchy	Oppose in part	<p>We support that in relation to adverse effects that cannot be avoided, remedied or mitigated, biodiversity offsetting and compensation can be ‘considered’. However, this should not be required for minor or</p>	<p>Delete</p> <p>Or</p> <p>Amend definition:</p>

			<p>transient effects, or be considered in the remit of small scale consents.</p> <p>In our view, this is not a matter of working down a hierarchy, but equivalent consideration across all aspects. That may require avoidance, but in difference circumstances, remediation may be appropriate when costs/benefits are assessed.</p> <p>On that basis, we have concerns with the inclusion of 'where possible' as this will lead to unnecessary uncertainty as to who's perspective this is to be taken. It may be considered 'possible' for an effect to be avoided by a council or environmental group, yet from the farming viewpoint it may be completely impracticable in practice or require disproportionate costs to the benefits or impacts involved. We consider the term 'where practicable' is preferable in this regard.</p>	<p><i>Effects management hierarchy means an approach to managing the adverse effects of subdivision, use and development that requires that</i></p> <p>–</p> <p><i>a) adverse effects are avoided where possible <u>practicable</u>;</i></p> <p><i>b) adverse effects that cannot be demonstrably avoided are remedied where possible <u>practicable</u>;</i></p> <p><i>c) adverse effects that cannot be demonstrably remedied are mitigated;</i></p> <p><i>d) in relation to adverse effects that cannot be avoided, remedied or mitigated, biodiversity offsetting <u>may be</u> considered; and</i></p> <p><i>e) if biodiversity offsetting is not demonstrably achievable for any indigenous biodiversity attribute on which there are residual adverse</i></p>
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				<i>effects, biodiversity compensation is <u>may be considered</u></i>
4	Definition – existing activity	Support in part	Section 10 of the RMA addresses matters within District Plans, and many of the provisions within this NPS may be addressed through regional plans, unitary plans, regional policy statements and so forth. Protection of existing use rights outside that afforded through District Plans, is addressed within Section 20A of the Act.	Amend definition: <i>Existing activity in this National Policy Statement, means a subdivision, use or development that is</i> <i>a. Lawfully established at the commencement date; but</i> <i>b. Not a land use covered by section 10 <u>or section 20A of the Act.</u></i>
5	Definition – New subdivision, use or development	Support in part	We have strong concerns about what will be classified as an existing activity, what will be treated as a new activity and how this will impact the future of horticulture. We believe if an activity has been legitimately carried out as part of a consented process previously, that this should be considered an ‘existing activity’. If it is it is treated as a new activity, it would be virtually impossible to get a new consent, given NPS-IB provisions, particularly within an SNA. In many if not most cases, previous consents have been obtained at considerable costs and resourcing implications for resource users and the overwhelming feedback	Amend along the lines of below: <i><u>New Subdivision, Use or Development, in this National Policy Statement, means a subdivision, use or development that is not an existing activity nor an activity enabled by section 10 <u>or section 20A of the RMA. It specifically excludes activities legitimately being undertaken as</u></u></i>

			<p>provided to us is that these should be treated as existing legitimate activities.</p> <p>Under new regulations, including the Essential Freshwater regulations, farmers will now be required to seek consent to continue to carry out certain activities. Despite these activities pre-existing with pre-existing effects, many would not be able to be undertaken if treated as a 'new activity'. Clarification is needed that existing activities extend to currently permitted activities, that may require resource consent as the result of other regulation.</p> <p>This could impact on vegetable rotations, where an existing activity rotates onto different highly productive land periodically to maintain soil health.</p>	<u>either permitted or consented activities.</u>
6	Objective 5	Oppose in part	The objective to "restore indigenous biodiversity" is too open-ended. The objective should specify the extent of restoration sought to provide certainty and clarity for both Council's and landowners.	Amend objective to specify or clarify the extent to which indigenous biodiversity is to be restored.
7	Objective 6	Support	It is important to recognise the role landowners and tangata whenua have in being stewards and kaitiaki of their land and the need to allow social, economic and cultural wellbeing.	Retain
8	Policy 10 (existing activities)	Support in part	This policy recognises the economic, social and cultural importance of existing activities, however, we are concerned with the inclusion of the word 'appropriate'. The inclusion raises potential uncertainty and leads to potential subjectivity on what	Amend as follows: <i>'to provide for <u>appropriate legitimately established existing activities that have already</u></i>

			<p>might and might not be appropriate. It will certainly be a point of potential litigation across the country at planning stages.</p> <p>Where a productive farm is classified as an SNA, it is more than acceptable for the existing activities on that farm to be considered appropriate.</p> <p>As above, we seek confirmation that existing activities includes consented activities, and those that are carried out as permitted activities but may require consent as a result of other regulation. It is a misnomer, and one with considerable potential impacts on land users, if this clarification is not given.</p>	<p><i>modified indigenous vegetation and habitats of indigenous fauna'</i></p> <p>Or otherwise clearly provide in both guidance material and associated provisions within Part 3, that where productive farmland is involved, existing farm activities are to be considered appropriate.</p> <p>Clarification is also needed that existing activities include consented activities, and permitted activities that may subsequently need consent as a result of other regulation</p>
9	3.5 Resilience to climate change	Support in part	<p>Support in principle the intention to provide for flexibility and resilience for climate change. In particular, support recognition given to the need to manage biosecurity risks. It is necessary to provide for clearance of indigenous vegetation, without onerous process, in times of biosecurity emergencies.</p> <p>However, there is uncertainty around the implementation of this clause. In particular, how to 'provide for the maintenance of ecological integrity through natural adjustments of habitats and ecosystems' or 'promoting the enhancement of the connectivity between ecosystems and potential habitats to enable migrations so that species continue to find viable niches as the climate changes'.</p>	<p>Amend to provide greater clarity as to what and how it should be implemented.</p> <p>Retain (b(ii))</p>

			It is likely that this clause, coupled with the precautionary approach, is likely to result in numerous litigation cases and considerable costs for councils and landowners alike.	
10	3.6 Precautionary approach	Oppose in part	The qualifier “but” does not provide enough certainty for applicants. As written, Local authorities may take a precautionary approach if only clause a) applies and effects may be minor or no more than minor.	Amend Delete “but” and replace with “and”
11	3.9 Managing adverse effects on SNAs	Support in part/Oppose in part	<p>3.9 must only apply to genuinely ‘new activities’ and not those merely needing re-consenting, or a new consent under different regulation (for instance as part of the Essential Freshwater (EFW) regulation). If this clarification was not provided, given most farmers will need consent to continue farming under the EFW proposals, it could mean that every farmer’s activities could then be treated as ‘new subdivision, use and development’. If that was to be the case, we strongly oppose any such inference and we highlight the detrimental impact this will have on the objectives of the proposed NPS. It is reiterated at page 50 of the Discussion document that 3.9 is not intended to apply to existing uses of land.</p> <p>We support the principle underlying 3.9(1), understanding the intention to be to avoid those adverse effects of new subdivision, use or development that would seriously damage SNAs. However, as drafted any minor, insignificant or temporary affect would need to be avoided. In 3.9(1)(b) and 3.9(2) the reference is to use the</p>	<p>Amend the definition for ‘new subdivision, use or development’ as per our submission point above</p> <p>Amend 3.9(1)(a) as follows:</p> <p><i>‘the following adverse effects on the SNA are <u>avoided managed as a priority</u>:’</i></p> <p>Amend 3.9(1)(b) as follows:</p> <p><i>‘the effects management hierarchy is applied to all other <u>more than minor</u> adverse effects’</i></p> <p>Amend 3.9(2)(a) as follows:</p>

			<p>effects-management hierarchy for all other adverse effects: this could capture the need to then work through the hierarchy for any temporary, minor or insignificant effect.</p> <p>HortNZ supports 3.9 (2) d) iv) providing for use of Maori land in a way that makes a significant contribution, as long as such an application for use also meets the other criteria of 3.9 (2) a) – c).</p> <p>HortNZ supports sub-clause (4) d). Indigenous shelter belts, stormwater/water management tools (such as sediment traps and dams), riparian or buffer planting are some of the infrastructure which are often identified as good management practice where appropriate. Where restoration is identified as GMP it should be excluded from management under the NPS. These common horticultural tools are critical to ensuring efficient management of resources and effects in horticultural operations. However, it should also be recognised that practices change over time as research and technology improve. Where such restoration has been utilised and is no longer required, it may no longer be the best use of land. Where the primary use of restoration was infrastructure, provision should be made for its removal should it no longer be the best use of land. This is particularly important for HPL.</p> <p>We support the definitions of functional need and operational need in this NPS.</p>	<p><i>'the subdivision, use or development is to take place in, or affects, an SNA classified as Medium;'</i></p> <p>Retain sub-clause 3.9 (2) d) iv)</p> <p>Amend 3.9 (4) d).....</p> <p>Indigenous vegetation or habitat of indigenous fauna established and managed for a purpose other than the maintenance, restoration or enhancement of indigenous biodiversity, and the use or development (<u>including clearance</u>) is necessary to meet that purpose.</p> <p>Retain 3.9(5)</p>
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			Support is also conditional on clarification or amendments to Appendix 1 to refine the identification process for SNAs.	
12	3.12 Existing activities in SNAs	Oppose in part	<p>Sub-clause (1) appears to contradict the title of the clause. The title refers to activities “in” SNA’s, while the sub-clause refers to the effects of activities “on” SNA’s. These have very different implications. We would oppose the application of this clause beyond the boundaries of an SNA.</p> <p>It is uncertain how the “cumulative loss” of existing activities is to be measured and is likely to make the continuation of any existing activity very difficult.</p> <p>As per the discussion above in this submission, an exclusion for those primary production activities with a FEP audited by a recognised auditor would allow for on-going operation and development of primary industries while providing for biodiversity initiatives where appropriate.</p>	<p>Amend 3.12(1) as below:</p> <p><i>(1) This clause applies to the management of the effects of existing activities on <u>within</u> SNAs”</i></p> <p>Amend 3.12(3) as follows:</p> <p><i>(3) In providing for existing activities in their policy statements and plans, local authorities must –</i></p> <p><i>a) ensure the continuation of an existing activity will not lead to the loss, including through cumulative loss, of extent or degradation of the ecological integrity of any SNA; and</i></p> <p>Amend to provide an exclusion for primary production activities with a FEP audited by an accredited auditor or organisation.</p>

13	3.13 General rules applying outside SNAs	Oppose in part	<p>We are concerned that this rule may result in perverse behaviours in order to avoid existing indigenous vegetation from being identified as an SNA, or to avoid having to provide additional assessment on any indigenous vegetation present.</p> <p>Many growers undertake voluntary planting projects on their farms. These efforts are self-driven without any fiscal or other material benefit. However, as currently drafted this NPS, and in particular Clause 3.13 and 3.13(3) growers will be discouraged from undertaking voluntary planting projects at the risk of their operations being restricted by additional regulation. In some instances, it may even result in some individuals removing indigenous vegetation to avoid additional costs.</p> <p>As regards subclause (1)(b), see comments above, and concerns raised, on the effects management hierarchy.</p> <p>Subclause (1)(c) duplicate clause 3.8 which lays out when and how SNA identification should occur. It also creates uncertainty as it allows councils to determine when an area outside an SNA requires identification.</p> <p>Clause 3.12(2) also creates uncertainty and confusion. Matters that have gone through an Appendix 1 assessment must then go through an RMA Schedule 1 planning process, to ensure landowners have adequate input and ability to challenge any such matters. We consider the provision unnecessary as once matters have gone</p>	<p>Retain 3.13(1)(a)</p> <p>Amend 3.13(1)(b) as follows:</p> <p style="padding-left: 40px;">“apply the effects management hierarchy <u>appropriately manage</u> adverse effects, <u>noting</u> except that biodiversity compensation may be considered as an alternative to biodiversity offsetting (and not only when biodiversity offsetting is not demonstrably achievable)</p> <p>Delete 3.13(1)(c).</p> <p>Delete 3.13(2) as it is unnecessary – and it is appropriate for such matters to undergo RMA Schedule 1 processes.</p> <p>Retain 3.13(3)</p> <p>Insert new 3.13(4):</p>

			<p>through an Appendix 1 assessment, they will become part of the Plan Change process.</p> <p>3.9 recognises that some indigenous vegetation or fauna may be established and managed for a purpose other than biodiversity. 3.9(4)(d) prioritises that primary function over and above biodiversity within a SNA. We believe this should be specified for indigenous vegetation or fauna outside SNA's also.</p> <p>As per the discussion above in this submission, an exclusion for those primary production activities with a FEP audited by a recognised auditor would allow for on-going operation and development of primary industries while providing for biodiversity initiatives where appropriate.</p>	<p><u>Sub-clause (1) does not apply to managing adverse effects where indigenous vegetation or habitat of indigenous fauna is established and managed for a purpose other than the maintenance, restoration or enhancement of indigenous biodiversity, and the use or development (including clearance) is necessary to meet that purpose.</u></p> <p><u>Amend to provide an exclusion for primary production activities with a FEP audited by an accredited auditor or organization.</u></p>
14	3.14 Identified taonga	Support in part	<p>We support the level of detail proposed from tangata whenua while working with council as opportunities should be created for mutually beneficial outcomes for the parties involved.</p> <p>However there is a concern that if taonga are identified on private land, landowners have no</p>	<p>Amend as follows:</p> <p>Add an additional subclause (6) to include the following principles of engagement on privately owned land:</p>

			<p>express recognition or ability to engage in the process over and above any member of the public who may choose to submit during the Schedule 1 process.</p>	<p><i>“Local authorities must use the following principles and approaches when undertaking actions under subclauses (3) to (5) in relation to privately owned land:</i></p> <p>a) partnership: local authorities and tangata whenua must seek to engage with affected landowners early and share information about taonga, potential management options and any support and incentives that may be available:</p> <p>b) transparency: local authorities must clearly inform landowners about how information gathered will be used and make existing information, draft assessments and other relevant information</p>
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				<p>available to relevant landowners for review:</p> <p>c) quality: wherever practicable, the values and extent of taonga should be verified by physical inspection:</p> <p>d) access: where permission to access a property on a voluntary basis is not given, powers of entry under section 333 of the Act should only be used as a last resort:</p> <p>As discussed above, we consider considerable implementation guidance and supporting advice will be needed in this regard.</p>
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15	3.16 Restoration and enhancement 3.16(2)	Oppose in part/support in part Support in	<p>Clarification is sought on the definition of wetlands. HortNZ would oppose the capture or inclusion of good management practices such as sediment ponds. These practices are support infrastructure to horticultural practices and are critical to managing environmental risks. The management of these entities as infrastructure is priority over the NPSIB objectives.</p> <p>HortNZ opposes the inclusion of former wetlands where these are present on land used for commercial horticultural cultivation.</p> <p>We believe that a more strategic approach is required for restoration and enhancement and that non-regulatory methods will provide the best outcomes long-term. Non-regulatory methods could include advice, support, partnerships and incentivisation.</p> <p>We support the prioritisation of restoration areas, however, to avoid duplication and excessive process/costs, prioritisation should form part of the SNA assessment process. There also needs to be flexibility in prioritising projects in order to get buy-in from local communities.</p> <p>As mentioned, we have concerns relating to the ability to impose and review restoration and enhancement consent conditions. Consent conditions need to be relevant to the effects being generated by the proposed activity.</p>	<p>Clarify the definition of wetlands (noting that wetlands are defined in the RMA and further defined in the NPSFM) and exclude good management practices (such as sediment control ponds).</p> <p>Amend to include further detail as to the former wetlands that may be included within the NPSIB</p> <p>Amend 3.16(2) to state any areas referred to in subclause (1)(b) and (c) will be identified as part of the clause 3.8 process. Amend 3.16(3) as follows:</p> <p style="text-align: center;"><i>Local authorities must promote, through <u>their regional biodiversity strategy, objectives, policies and methods in policy statements and plans, the restoration and enhancement (including through reconstruction) of areas to which this clause applies.</u></i></p> <p>Amend 3.16(4) as follows:</p>
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				<p><i>The <u>regional biodiversity strategy objectives, policies or methods</u> must identify opportunities for restoration and enhancement of those areas, <u>where possible</u> prioritising all of the following over other indigenous biodiversity restoration projects:.....</i></p> <p>Retain 3.16(5)</p> <p>Delete 3.16(6)</p>
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16	3.17 Increasing indigenous vegetation cover	Oppose	<p>It is unclear how the 10%, or any threshold for enhancement will be implemented and how the rural and urban areas will be defined.</p> <p>We are particularly concerned that rural landowners and communities will end up bearing the costs of implementing a 10% target in rural areas. Urban areas have large tracts of public spaces such as parks and footpaths (for street trees). It is logical that these spaces will be used to accommodate the majority of target increases. However, these spaces are not as prevalent in rural areas and it is likely that the onus will fall to private landowners to accommodate coverage increases on private land. This comes at significant cost, not only planting/implementation but also in terms of diminished use of land and long-term maintenance costs. There is no requirement for councils to provide incentives and as discussed above in this submission compensation under the RMA is unlikely.</p> <p>There is no guidance on how regional councils are to determine an appropriate percentage to increase indigenous vegetation in any given area. Such direction may be necessary to ensure appropriate and equitable distribution across different areas.</p>	<p>Amend:</p> <ul style="list-style-type: none"> - So that the 10% target is part of strategic planning provisions under the LGA, rather than implementation on a resource consent specific basis - Provide incentives for indigenous biodiversity enhancement and restoration that assists in achieving the target set out above - Include guidelines on how regional councils are to determine an appropriate percentage increase in indigenous vegetation cover
17	3.18 Regional biodiversity strategies	Support in part	<p>We support the development of Regional Biodiversity Strategies and believe they will be fundamental in achieving the restoration and enhancement goals of the NPSIB.</p>	Retain

18	3.19 Assessment of environmental effects	Oppose in part	<p>This clause requires a very broad range of information from every application regardless of relevance or scale. The level of information should be relevant to the type of consent. Furthermore, many of the information requirements will need specialist advice, resulting in further costs for applicants. Similar to information requirements, costs should be reasonable and proportionate to the consent.</p> <p>It is unclear whether Clause 3.19 (1) applies to those activities already requiring consent for another matter, or whether it applies to all activities where all or any of the site is in or affects one of the listed attributes.</p> <p>Clarification is required on the extent of indigenous vegetation or habitat that would trigger sub-clause (1) b) or c). As worded an assessment may be required for an activity on a site containing individual or minimal indigenous vegetation, particularly where that activity was primarily related to cultivation associated with horticultural operations.</p>	<p>Amend</p> <ul style="list-style-type: none"> - Relate 3.19 to new land use and subdivision consents and clarify whether clause 3.19 (1) applies to those activities already requiring consent for another matter, or whether it applies to all activities where all or any of the site is in or affects one of the listed attributes - Provide clarification on the extent of indigenous vegetation or habitat that would trigger sub-clause (1) b) or c)
19	Appendix 1: Criteria for identifying significant indigenous vegetation and significant habitat of indigenous fauna.	Oppose	<p>Clarification is sought on clause (2) as to whether, for an area to be identified as an SNA, it is required to meet:</p> <ul style="list-style-type: none"> • one attribute from each criterion, or • only one attribute from any one of the criteria. <p>Clause (2) should be amended to provide clarity and certainty around the identification of SNA's. If it is the intent that only one attribute from any one of the criteria is required, then any and all indigenous vegetation or habitat would be identified as an SNA, and any land could be seen as a buffer or providing</p>	<p>Amend Clause (2)</p> <p>A significant natural area will meet any one of the attributes <u>from each</u> of the following four criteria.....</p>

			connectivity. This would mean that every activity regardless of scale or relevance, would be required to provide an assessment of effects and would be required to avoid adverse effects in the first instance. This is a particularly high bar to be placed on all activities.	
20	Appendix 2: Tool for managing effects on significant natural areas	Oppose	The proposed management framework is intended to assist in identifying a SNA as high or medium. However, the proposed management framework identifies the difference between high and medium as either “a high level/range/presense”, or “a moderate level/range/presence” of any given attribute. There is no quantitative means of making an objective assessment. This is likely to result in extensive litigation cases, adding to costs and creating further delays.	Provide direction on how to determine an attribute as “high” versus “moderate”.
21	Appendix 3: Principles for biodiversity offsetting	Support in part	HortNZ supports providing for biodiversity offsetting and generally supports the principles outlined in Appendix 3. However, clarification is sought on what is deemed to be “socially acceptable options” as per clause 2) ii). Clause 3 and clause 4 appear to conflict where by clause 3 stipulates offsetting results in “preferably a net gain”, and clause 4 requires offsetting to “achieve gains....above and beyond gains that would have occurred in the absence of the offset..”. The last sentence of clause 4 would fit better with clause 2 as a limit.	Provide clarification of what is “socially acceptable” offsetting. Delete Clause 4 ‘Additionality’ entirely. Amend Clause 2 to insert: <u>iv) Offset design and implementation would displace adverse effects to other locations.</u>
22	Appendix 4: Principles for biodiversity compensation	Generally, support	Clarification is sought on what is deemed to be “socially acceptable options” as per clause 2) b).	Provide clarification of what is “socially acceptable” offsetting.

			As discussed above in this submission, further provision is required beyond what is provided under S85 of the RMA.	Include provision for where private land is rendered economically unfeasible as a result of the NPSIB.
23	Geothermal ecosystems	Neutral	As discussed above.	Consider implications of geothermal ecosystem definition and management of geothermal ecosystems so as to not conflict with other initiatives (e.g emission reduction and climate change goals). Address geothermal ecosystem management through strategic planning.

