www.al.nz | lawyers@al.nz

14 July 2022

Exposure Draft of the National Policy Statement for Indigenous Biodiversity

The Ministry for the Environment (MfE) has released the exposure draft of the proposed National Policy Statement for Indigenous Biodiversity (NPSIB). The NPSIB will seek to protect, maintain and restore indigenous biodiversity in a way that recognises tangata whenua as kaitiaki and provides for the social, economic and cultural wellbeing of people and communities.

Background

MfE released the first draft of the proposed NPSIB in November 2019. Public consultation was held between November 2019 and March 2020, during which time, over 7000 submissions were lodged. MfE subsequently released the summary of submissions on the draft and made amendments in response to those submissions. This culminated in the release of the exposure draft and MfE is now seeking feedback on that draft.

Summary

Fundamental concepts of the NPSIB

Three fundamental concepts are described in the NPSIB.

Te Rito o te Harakeke refers to the need to maintain the integrity of indigenous biodiversity and recognises the intrinsic value and mauri of indigenous biodiversity. It recognises that peoples' health and wellbeing are dependent on the health and wellbeing of indigenous biodiversity and people have a responsibility to care for it. It acknowledges the web of interconnectedness between indigenous species, ecosystems, the wider environment, and the community. The proposed NPSIB requires local authorities to engage with communities and tangata whenua to determine how to give effect to the fundamental concept of Te Rito o te Harakeke.

The *maintenance of indigenous biodiversity* requires at least no reduction in:

- the size of populations of indigenous species;
- indigenous species occupancy across their natural range;
- the properties and function of ecosystems and habitats;
- the full range and extent of ecosystems and habitats;
- connectivity between, and buffering around, ecosystems; and
- the resilience and adaptability of ecosystems.

The *effects management hierarchy* requires that adverse effects of an activity are managed, to the extent practicable, in the following order: avoid, minimise, remedy, offset, compensate. If biodiversity compensation is not appropriate, the activity itself should be avoided. The NPSIB details principles for offsetting and compensation.

All land tenures are covered

The proposed NPSIB will apply to all land types and will affect the management of biodiversity on public, private and Māori land. It will have implications for a range of sectors including farming, urban development, mining/aggregate and forestry.

Significant Natural Areas

The NPSIB will require councils to undertake a district-wide assessment to identify areas of significant indigenous vegetation and habitats of significant indigenous fauna which qualify as Significant National Areas (**SNAs**). The assessment criteria are detailed at Appendix 1 of the NPSIB and includes attributes relating to representativeness, diversity and pattern, rarity and distinctiveness, and ecological context.

This publication is intended only to provide a summary of the subject covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this document without first obtaining specific professional advice. If you require any advice or further information on the subject matter of this article, please contact the partner/solicitor in the firm who normally advises you.

Exposure Draft of the National Policy Statement for Indigenous Biodiversity
(Continued)

The proposed NPSIB includes provisions to avoid and manage adverse effects of new subdivision, use or development within SNAs. Specified adverse effects must be avoided, subject to limited exceptions. Activities must otherwise be managed in accordance with the effects management hierarchy.

The proposed NPSIB makes provision for existing activities to continue. 'Existing activities' include subdivision, use or development that is lawfully established at the commencement date (but excludes land uses that are already protected by existing use rights under section 10 of the RMA). Regional councils must identify existing activities to be provided for, and local authorities must amend their plans to ensure that those activities can continue provided the effects on SNAs are no greater in intensity, scale, or character over time than at the commencement date and do not result in the loss of extent or degradation of ecological integrity of the SNA. Specific provision is also made in the proposed NPSIB for the continued maintenance of improved pasture.

Identified taonga species

The proposed NPSIB requires councils to work together with tangata whenua (using an agreed process) to determine the indigenous species, populations, and ecosystems in the district that are taonga. It sets a framework to enable councils and tangata whenua to work together to identify acknowledged taonga in their district plans by:

- describing the taonga and, to the extent agreed by tangata whenua, mapping their location and describing their values; and
- describing, to the extent agreed by tangata whenua, the historical, cultural, and spiritual relationship of tangata whenua with the taonga.

Indigenous biodiversity outside an SNA

The proposed NPSIB also provides for the maintenance of indigenous biodiversity outside SNAs.

It will require councils to take steps to maintain indigenous biodiversity in areas outside of SNAs, including by making or changing their plans to:

- apply the effects management hierarchy to any adverse effects on indigenous biodiversity of a new subdivision, use, or development that may be irreversible; and
- providing appropriate controls to manage other adverse effects on indigenous biodiversity of a new subdivision, use and development.

In addition, the NPSIB introduces a new concept of 'highly mobile fauna' and directs regional councils to identify and map 'highly mobile fauna areas'. Local authorities are directed to include objectives, policies and methods for managing adverse effects of new subdivision, use and development in the highly mobile fauna areas to ensure viable populations are maintained.

Finally, it is noteworthy that any resource consent relating to indigenous biodiversity must include an ecologist report.

Next steps

Feedback on the exposure draft closes on 21 July 2022 and can be lodged using the online submission form.

The NPSIB is expected to come into force in late 2022. Staged implementation is proposed over the following decade, with mapping and notification of SNAs to occur by 2027.

Want to know more?

If you have any questions about the exposure draft, please contact our specialist environment, planning and natural resources team.

This publication is intended only to provide a summary of the subject covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this document without first obtaining specific professional advice. If you require any advice or further information on the subject matter of this article, please contact the partner/solicitor in the firm who normally advises you.