



Briefing: 100-day plan: Ceasing new Significant Natural Areas and review of their operation

Date submitted: 31 January 2024

Tracking number: BRF-4066

Security level: Policy and Privacy

MfE priority: Urgent

Actions sought from Ministers		
Name and position	Action sought	Response by
To Hon Andrew HOGGARD Associate Minister for the Environment	Agree to cease councils' implementation of new SNAs by amending the NPSIB via an RMA amendment bill. Direct officials to draft a Cabinet paper to confirm policy decisions for the bill. Agree to a process and scope for reviewing the operation of SNAs.	5 February 2024
cc Hon Penny SIMMONDS Minister for the Environment	Note the content of this briefing.	
cc Hon Chris BISHOP Minister Responsible for RMA Reform	Note the content of this briefing.	

Actions for Minister's office staff
If agreed forward to Hon Tama Potaka, Minister of Conservation Hon Todd McClay, Minister for Agriculture Return the signed briefing to the Ministry for the Environment (ministerials@mfe.govt.nz).

Appendices and attachments
Appendix 1: Detailed description of options to cease the implementation of new SNAs.

Key contacts at Ministry for the Environment			
Position	Name	Cell phone	First contact
Principal Author	Cathy McNab		
Responsible Manager	Jo Burton		
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Minister's comments

100-day plan: Ceasing new Significant Natural Areas and review of their operation

Key messages

1. This paper follows on from a paper late last year on how to action the Government's 100-day plan commitment to "Begin to cease implementation of new Significant Natural Areas (SNAs) and seek advice on operation of the areas" [BRF 3970 refers]. This paper provides more detailed options for your decision.
2. We propose that cessation of the implementation of new SNAs under the National Policy Statement for Indigenous Biodiversity (NPSIB) be achieved by amending the NPSIB to suspend for a period of time the requirements on councils in:
 - a. Clause 3.8 to commence assessments of their districts for areas that qualify as SNAs
 - b. Clause 3.8(6) requiring councils to assess any area likely to be an SNA that becomes evident through other processes such as a resource consent application
 - c. Clauses 3.9, 4.1(1) and 4.2 identifying and notifying SNAs in district plans.
3. The most expeditious approach to achieving these changes would be through primary legislation. Cabinet recently noted that an additional phase two RMA amendment bill would be developed and concluded by the end of the year to pick up changes not included in the fast-track legislation. That bill is likely to focus on changes to other national direction, so it would make sense to also incorporate changes to the NPSIB.
4. For achieving the second limb of the Government's commitment (reviewing the operation of SNAs), we propose that a review be led by officials, and commence with targeted expert and Treaty partner engagement.
5. We seek your direction on the focus and scope of the review. We can advise on the appropriate process for making changes to the NPSIB based on the review findings at a later date.

Recommendations

We recommend that you:

1. **Agree** to cease implementation of new SNAs by amending the NPSIB by:

- i. Suspending, for three years from the date the NPSIB came into force, the requirement for councils to assess their districts for areas that qualify as SNAs and include those SNAs in their plans (refer NPSIB clauses 3.8-3.9, and 4.1(1) and 4.2 (preferred))

Yes | No

OR

- ii. Extending the existing timeframe for councils to include SNAs in plans by an additional three years (from 5 years to 8 years) (refer NPSIB clause 4.2)

Yes | No

2. **Note** that the proposed changes to the NPSIB will not change Resource Management Act 1991 (RMA) requirements for councils to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna, nor council processes initiated before the NPSIB

Yes | No

3. **Note** that councils would still be required to give effect to NPSIB management approaches within 5 years for existing SNAs in plans

Yes | No

4. **Agree** to progress agreed changes to the NPSIB via the bill to progress other phase two RMA amendments (additional to the fast-track legislation) [CAB-24-MIN-0008 refers]

Yes | No

5. **Note** that to meet the timing of the bill, Cabinet policy decisions on the NPSIB will be required as soon as possible

Yes | No

6. **Direct** officials to draft a Cabinet paper reflecting your decisions on changes to the NPSIB for your approval by 8 February

Yes | No

7. **Direct** officials to initiate scoping of an official-led review of the operation of SNAs under the NPSIB to commence in the second quarter 2024

Yes | No

8. **Discuss** with officials the scope and process for the review of the operation of SNAs

Yes | No

9. 9(2)(h)
- 

Yes | No

Signatures



Hayden Johnston
General Manager
Natural Environment Policy

31 January 2024

Hon Andrew HOGGARD
Associate Minister for the Environment

Date

100-day plan: Ceasing new Significant Natural Areas and review of their operation

Purpose

1. This briefing follows from BRF-3970 and seeks:
 - a. agreement to cease the implementation of new Significant Natural Areas (SNAs) under the National Policy Statement for Indigenous Biodiversity (NPSIB) via a legislative amendment
 - b. agreement for officials to initiate a review of the operation of SNAs and your direction on the focus and scope for the review.

Background

2. Councils are at different stages, and have instituted a range of approaches, to fulfil their RMA obligations to manage and protect biodiversity, including identifying SNAs (or similarly named protected areas) in their plans.
3. The NPSIB came into force in August 2023. It codifies the requirements of the RMA, providing a consistent framework and criteria for councils to assess and include SNAs within their plans, manage SNAs, and specifies timeframes for those actions.
4. The NPSIB SNA identification criteria are based on practices of a number of regional councils. Around two-thirds of councils have some SNAs included in district plans and about half have moderately complete or complete lists of SNAs included. This includes urban, semi-urban and rural councils (most recently Timaru and Waimakariri).
5. Cabinet has directed officials to “provide advice by 31 January on options to review the operation of Significant Natural Areas, including options to cease the implementation of new Significant Natural Areas” [CAB-23-MIN-0468 refers].
6. A briefing to Minister Simmonds in December 2023, copied to you [BRF-3970 refers], provided an overview of the NPSIB and how it manages SNAs, as well as high-level options for ceasing the implementation of new SNAs under the NPSIB.

Ceasing implementation of new SNAs under the NPSIB

Option One - suspend commencement of identification of new SNAs (preferred)

6. We think the most effective way to cease implementation of new SNAs under the NPSIB is to amend the NPSIB obligations on councils that relate to the identification of SNAs. This would allow for a period of time to review the NPSIB and make necessary changes.
7. Specifically, we propose that NPSIB provisions for local authorities to assess areas that qualify as SNAs and include them in their plans (refer NPSIB clauses 3.8-3.9 and 4.1(1) and 4.2) be suspended for three years from the date of NPSIB commencement (moving from August 2023 to August 2026).
8. Under this option, the amended NPSIB would direct councils not to undertake the assessment process or notify any SNAs in their plans until August 2026. This ensures that from the date of the change, no new SNAs are assessed or notified in plans under NPSIB direction.
9. This option would postpone the requirement for the use of the NPSIB principles and ecological significance criteria set for identifying and assessing areas, and may have consequential effect on other provisions, which can be considered as part of drafting.
10. It would not stop councils' existing processes initiated before the NPSIB came into force. Further, councils could continue to use NPSIB processes and criteria to undertake their RMA functions in accordance with requirements in their plans. The change will not act retrospectively so transitional provisions may be needed at drafting to cover any council plans notified to give effect to the NPSIB after the NPSIB commencement, but before an option one change was put into effect.
11. For existing SNAs/habitats included in plans, councils would still need to give effect (within 5 years) to the NPSIB management approaches (refer clauses 3.10 to 3.17). Existing activities in SNAs (such as farming) would be able to continue as long as they do not increase adverse effects on the SNA. New activities, such as tracks and small sheds, would be allowed if they have minor adverse effects.

Option Two - extend timeframes for councils to include SNAs in plans

12. An alternative option is to extend the timeframes for councils to include SNAs in plans by a fixed period of time (refer NPSIB clause 4.2).
13. Under this option the five-year timeframe for councils to include areas that qualify as SNAs in a notified plan would be extended to eight years.

14. In contrast to option one, option two would not stop councils undertaking NPSIB assessments for SNAs and including them in plans, but would enable councils to deprioritise such activity until the national direction settled.
15. More detailed information on the drafting and effect of the options is provided in **Appendix 1**.

Process for amending the NPSIB

16. Amendments to the NPSIB would be most expeditiously progressed via a suitable legislative vehicle, rather than the process set out for amending national direction under the RMA [BRF-3970 refers].
17. On 23 January 2024 Cabinet noted the intention to introduce a bill to progress other phase two RMA amendments to be passed by the end 2024 in addition to the fast-track legislation [CAB-24-MIN-0008 refers].
18. Changes to other national direction instruments are likely to be included in this additional bill, and we recommend using this bill process to make the necessary amendments to the NPSIB.
19. There is precedent for amending national direction via primary legislation (refer RMA 1991 s77S). 9(2)(h) There is also potential for public criticism as the approach is unorthodox, circumventing RMA processes for changing national direction [BRF 3970 refers]. This may be mitigated, to some extent, by engaging key stakeholders prior to the introduction of legislation.
20. The timing is tight for including amendments in the bill. We will therefore need decisions from you by 5 February to inform drafting of a Cabinet paper to obtain agreement to your changes for inclusion in the bill.

Review of the operation of SNAs

Approach to the Review

21. There are several approaches that could be used to review the operation of SNAs. A review could be undertaken by:
 - a. commissioning an experienced professional (legal or other expertise)
 - b. establishing a technical advisory group
 - c. an officials-led process.
22. We propose that a review of the operation of SNAs under the NPSIB be led by officials. We envisage the review would commence in the second quarter 2024.

23. The proposed approach is considered efficient, in that expertise can be engaged as and when needed. Officials envisage following a process involving:
- a. working with councils to review the operation of existing SNAs
 - b. targeted technical expert, stakeholder and Māori/iwi/hāpu engagement to identify key issues and potential solutions for improving operation of SNAs.
24. We can advise you on the appropriate process for making changes to the NPSIB based on the review findings at a later date. Potentially a standard Minister-led RMA process [BRF-3970 refers] could be used to effect any changes. That regulatory process could take one to two years, depending on the scale and scope of changes arising from the review.

Scope of review

25. We recommend that you discuss and confirm the scope of the review with officials.
26. The review into the operation of SNAs could potentially investigate:
- a. SNA identification criteria, such as ecological significance criteria – officials are aware of criticism from some groups that some councils' and the NPSIB's criteria (which was informed by some councils' criteria) are not well-focused and may result in capture of land of less significant biodiversity value. The review could inform better focused NPSIB criteria for councils
 - b. Rules pertaining to land use for land identified as an SNA – e.g. to review land use limitations imposed by some councils. The review could inform greater obligation for councils to impose proportionate and clear land use limitations and exceptions
 - c. Processes for engaging with landowners – e.g. to address concerns that landowners do not have resources to respond to council instigated processes. Principles to improve council engagement with landowners are included in the NPSIB along with the right for landowners to request a site visit if they have concerns about the values of an SNA on their land. During the development of the NPSIB, changes were made to improve landowners' ability to respond to council instigated processes to identify SNAs. The review could review these processes and what has worked well to date.

Te Tiriti analysis

27. Māori have a significant interest in indigenous biodiversity. The NPSIB requires SNAs to be identified on all land tenures including Māori land. For Māori land it enables local approaches to be developed between councils and Māori which both protect SNAs and enable development.

28. Many iwi/Māori submitting on the NPSIB supported the purpose of the NPSIB due to its alignment with a focus on the health of the environment (e.g. Te Arawa Lakes Trust). Many iwi/Māori, however, were opposed to the way the NPSIB carried out this purpose, particularly because of the identification of SNAs on their land without their agreement (e.g. Taitokerau Māori Forests Inc, Tuwharetoa Māori Trust Board). During the development of the NPSIB, some Māori sought greater engagement or involvement in its design (e.g. Raukawa Settlement Trust, Te Runanga o Ngāi Tahu).
29. Some Treaty settlement deeds, legislation and accords reinforce this engagement expectation, requiring specific requirements to be met. For example, the relationship agreement between the Ministry for the Environment and Ngāti Tūwharetoa required by the Ngāti Tūwharetoa Claims Settlement Act 2018 requires the Ministry to engage in good faith about any policy that will directly impact the area of Tūwharetoa's interest, which would include any changes to the NPSIB. Some settlements have specific engagement requirements when national direction is being amended (e.g. Te Arawa Lakes Deed of Settlement and Ngā Hapū o Ngāti Porou Act).
30. Accordingly, it is highly likely that Māori will wish to engage over changes that would cease implementation of new SNAs, and on the review of the operation of SNAs. Officials can provide further advice about iwi/Māori groups with whom engagement is required and those who would have a particular interest in changes to the NPSIB.

Consultation and engagement

31. Early engagement with councils, key stakeholders and Treaty partners is recommended to help develop the detailed scope of the review.
32. It is preferable that engagement be coordinated with other national direction being addressed at the same time. This would help to manage the cumulative load on those being engaged with.

Risks and mitigations

33. As previously noted [BRF-3970 refers], Ministers do not have power to direct councils to cease carrying out RMA requirements and functions for protecting biodiversity, or to direct councils not to implement a national policy statement.
34. Many councils have already included SNAs, or similar, in their plans and policy statements under RMA provisions.
35. Local government bodies have also raised concerns that recent changes to district plans stemming from new national guidance have contributed to "planning fatigue".

36. These risks are intended to be mitigated by:

- a. assessing existing council SNA processes as part of the review to ensure they are producing desired outcomes, to identify any changes needed to national direction
- b. aligning, where possible, consultation with other national direction processes and maintaining processes to keep councils well informed.

[Legally privileged] Legal issues

37.

38.

39.

40.

41.

9(2)(h)

Financial, regulatory and legislative implications

- 42. There are no immediate financial implications for the Government, though advice will be provided to you about the resourcing implications for the review.
- 43. There may be implications for local authorities for Long-Term Planning. Some councils are likely to have initiated consultation to address NPSIB requirements and may need to replan in response to a cessation of SNA requirements.

44. Delaying the implementation of SNAs under the NPSIB may have implications for the delivery of the Aotearoa New Zealand Biodiversity Strategy¹ and commitment to help halt global biodiversity loss under the Convention on Biological Diversity (to which New Zealand has been a member since 1993).

Next steps

45. The proposed next steps and indicative timing for progressing this work are outlined below.

Timeline	Description
5 February 2024	Agreement to the policy approach for beginning to cease SNAs, and the terms of a review.
8 February 2024	Draft Cabinet paper to confirm policy decisions for ceasing SNAs for the phase two RM reform bill provided for your approval.
12 February 2024	Ministerial and agency consultation commences (truncated and concurrent).
22 February 2024	Lodging papers with Cabinet Office.
28 February 2024	ENV committee.
4 March 2024	Cabinet.

¹ Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy, launched in August 2020, sets out a strategic framework for the protection, restoration and sustainable use of biodiversity, particularly indigenous biodiversity, in Aotearoa New Zealand from 2020 to 2050.



Appendix 1: Detailed description of options to cease the implementation of new SNAs

Option	Indicative drafting
<p>Option 1: Suspend the commencement of identification of new SNAs</p> <p>This change would introduce a future commencement date for the provisions that require territorial authorities to undertake district-wide assessments and subsequent notification of the newly qualified SNAs in plans.</p>	<p>There are various approaches to delivering this option and it will be determined by PCO. The initial suggestion is that new clauses are added to the NPSIB to:</p> <ul style="list-style-type: none"> – remove the requirement on councils to commence the district wide SNA assessments and notification as soon as reasonably practicable (changes to clause 4.1) – direct councils to not commence the district wide SNA assessment until three years from the NPSIB commencement date (4 August 2023) (changes to clauses 3.8 and 4.2) – timing for subsequent notification in plans following any district wide assessment would be deferred (changes to clause 3.9 and 4.2) – the requirement for councils to assess any area likely to be an SNA that becomes evident through other processes such as a resource consent application would also be deferred (changes to clause 3.8(6)). <p>To implement the change the following changes would be made:</p> <ul style="list-style-type: none"> – Clause 4.1(1), ensure that councils must give effect to the national direction as soon as reasonably practicable, apart from identification, assessment, mapping and notification of SNAs which should align with changes to clause 4.2(1) – Clause 4.2(1), ensure that local authorities must assess and identify areas that qualify as SNA and publicly notify new SNAs within 8 years after the NPSIB commencement date but not prior to 3 years from that date. The current timeframes set-out within clause 4.2(1) will need to remain for other elements of subpart 2 of Part 3 – Changes to clause 3.8 may also be needed to link it to clause 4.2(1) – Clause 3.8(6) - give more time to include any area assessed as being an SNA in a notified plan change. <p>Consequential changes may be required to other elements of the national direction including transitional provisions to cover any plan processes that give effect to the NPSIB since the NPSIB came into force but before the change is in effect.</p>
<p>Option 2: Extend the timeframes for councils to include SNAs in plans</p> <p>The intent of the changes is to extend the timeframes when local authorities give effect to the NPSIB and when plan changes must incorporate SNAs.</p>	<p>The components of this approach include:</p> <ul style="list-style-type: none"> – extend the timeframe for including SNAs in a publicly notified plan to 8 years from the NPSIB commencement date (change to clause 4.2) – the requirement for councils to assess any area likely to be an SNA that becomes evident through other processes such as a resource consent application would also be deferred (change to clause 3.8(6)). <p>To implement this change, the following amendments could be made to the NPSIB (noting consequential changes may also be required):</p> <ul style="list-style-type: none"> – Clause 4.1(1), ensure that councils must give effect to the national direction as soon as reasonably practicable, apart from identification, assessment, mapping and notification of SNAs which should align with changes to clause 4.2(1) – Clause 4.2(1), ensure that local authorities must publicly notify new SNAs within 8 years after commencement. The current timeframes set-out within clause 4.2(1) will need to remain for other elements of subpart 2 of Part 3 – Clause 3.8(6) - give more time to include any area assessed as being an SNA in a notified plan change.