



Briefing: Proposed scope and process for the review of the operation of significant natural areas

Date submitted: 14 June 2024

Tracking number: BRF-4760

Security level: **Classification**

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 the focus and process for the review into the operation of significant natural areas in consultation with your colleagues.	21 June 2024
CC Hon Penny SIMMONDS Minister for the Environment	Discuss the focus and process for the review into the operation of significant natural areas in consultation with the Associate Minister for the Environment.	21 June 2024

Actions for Minister's office staff
<p>Forward this briefing to: Hon Tama Potaka, Minister of Conservation, Minister for Māori Crown Relations: Te Arawhiti.</p> <p>Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).</p>

Appendices and attachments
Nil

Key contacts at Ministry for the Environment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
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Minister's comments

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Proposed scope and process for the review of the operation of significant natural areas

Key messages

1. The Government's 100-day plan commitment was to "begin to cease implementation of new significant natural areas (SNAs) and seek advice on operation of the areas".
2. You have authorisation from Cabinet to determine the scope and terms of reference for the review of the operation of significant natural areas (the review), in consultation with specified colleagues [ECO-24-MIN-0021 refers].
3. The complexity and scale of the review will have a direct impact on the resources needed, timeframes for delivery and on the Ministry's ability to deliver other projects, such as the biodiversity credits work.
4. In advance of decisions about the scope and process for a review, officials have been establishing:
 - i. how councils have been implementing the National Policy Statement for Indigenous Biodiversity (NPSIB), and how SNAs (pre the NPSIB) have been operating
 - ii. stakeholder and Treaty Partners views on relevant matters via a review of previous submissions
 - iii. approaches to protecting biodiversity in other jurisdictions.
5. Officials have identified several options for the scope of the review, ranging from a narrowly-focused consideration of specific elements of the NPSIB, to a complete examination of indigenous biodiversity protection in the resource management system.
6. Officials have identified the following potential options:
 - i. a narrowly focussed review (Option 1)
 - ii. a comprehensive review of the NPSIB (Option 2)
 - iii. Alignment with Phase 3 of RM reform (Option 3).
7. Only a narrowly focussed review (Option 1) could be undertaken within the national direction programme (NDP) timeframes s 9(2)(f)(iv)
8. If a wider review is preferred, then any subsequent changes to the NPSIB would need to be progressed separately to the NDP.

Recommendations

We recommend that you:

a. **agree** for the scope of the review to:

i. **either** be narrowly focused on the operation of the SNA (Option 1)

Yes | No

and/or to focus on:

a). the SNA identification criteria within the NPSIB (Option 1(a))

Yes | No

b). the assessment and SNA identification processes within the NPSIB (Option 1(b))

Yes | No

c). the management of adverse effects on SNAs within the NPSIB (Option 1(c))

Yes | No

ii. **or** be a comprehensive review of the NPSIB (Option 2): This would be a wide-ranging review of the policy settings and provisions of the NPSIB

Yes | No

iii. **or** align with Phase 3 of Resource Management Reform (Option 3): The immediate focus would be to review indigenous biodiversity protection in the RMA. A reconsideration of the role and function of the NPSIB within the revised resource management system may then be required

Yes | No

b. **agree** to forward this briefing to the:

i. Minister of Conservation, Hon Tama Potaka

Yes | No

ii. Minister for Māori Crown Relations: Te Arawhiti, Hon Tam Potaka

Yes | No

c. **discuss** the scope of the review with the Minister for the Environment, Minister of Conservation and the Minister for Māori Crown Relations: Te Arawhiti

Yes | No

d. **note** any changes to the NPSIB resulting from review will require further policy development and implementation in line with Cabinet and statutory requirements

- e. **note** that there is an opportunity to align process and timings for a narrowly-scoped review with the NDP work programme
- f. **note** that early engagement can help to understand and address concerns which could, if unknown, lead to litigation or criticism from stakeholders and Treaty Partners
- g. **meet** with officials for further discussion on the review scope.

Yes | No

Signatures



Hayden Johnston
General Manager – Natural Environment
Policy

14 June 2024

Hon Andrew HOGGARD
Associate Minister for the Environment
Date

Proposed scope and process for the review of the operation of significant natural areas

Purpose


1. This briefing seeks your agreement on a proposed scope and process for the review of the operation of significant natural areas (SNAs) (the review).

Background

2. You directed officials to commence a review of the SNA provisions in the National Policy Statement for Indigenous Biodiversity (NPSIB), as part of the 100-day plan commitment “begin to cease implementation of new SNAs and seek advice on operation of the areas” [ECO-24-MIN-0021 refers].
3. You have authorisation from Cabinet to determine the scope and terms of reference for the review, in consultation with the Minister for the Environment, Minister of Conservation, and Minister for Māori Crown Relations: Te Arawhiti [ECO-24-MIN-0021 refers].
4. The NPSIB came into force in August 2023. It codifies the requirements of the Resource Management Act 1991 (RMA) and supports local authorities’ functions in maintaining and protecting indigenous biodiversity. It includes requirements for assessing and identifying SNAs and for managing adverse effects from development and activities affecting SNAs. It also provides principles around recognising and engaging with landowners.
5. From our earlier engagement, in particularly around the Resource Management (Freshwater and Other Matters) Amendment Bill [BRF-4519 refers], we understand that:
 - i. Many of those we engaged with wanted to be involved in a review of SNAs/the NPSIB
 - ii. *Iwi/Māori* are likely to seek options that enable reconsideration of the identification of SNAs on Māori land. The Freshwater Iwi Leaders Group Pou Taiao, in a recent letter to Minister Bishop, noted that they do not consider that the operation of SNAs over the last 30 years has worked well because SNA identification has exacerbated existing barriers to development on Māori land.
 - iii. *Councils* want clarity about what changes are proposed and over what timeframe any changes might take effect, so that they can take this into account in their planning and budgeting processes. They are likely to favour options that either provide certainty more quickly or consolidate changes, rather than having a phased approach with multiple changes.
 - iv. *Primary sector groups (including some landowner stakeholders)* are likely to seek options that address a broad range of issues. However, the potential breadth of the SNA identification criteria was a key issue in their previous submissions.

- v. *ENGOs and others* are unlikely to support a review of the NPSIB or the RMA provisions due to the limited time/experience with the NPSIB in place, and the potential for significant adverse effects on indigenous biodiversity resulting from any changes.

s 9(2)(f)(iv)



Analysis and advice

Scope of the review

10. You have indicated your preference for an official-led review [BRF-4066 refers]. Work on the review is underway to identify key issues and gaps to inform any future policy development. The work is focussed on:
 - i. how councils have been implementing the NPSIB, and how SNAs (pre the NPSIB) have been operating
 - ii. revisiting earlier submissions to assess stakeholder and Treaty Partner views on matters that have not already been resolved
 - iii. an analysis of approaches to protect biodiversity in other jurisdictions.
11. Officials have identified the following options:
 - i. Option 1 – Narrowly focused review: The focus would be on specific elements of the operation of SNAs. Based on feedback and initial high-level review of submissions

to the exposure draft of the NPSIB, there is an opportunity to narrow the focus to the following elements of the operation of SNAs:

1. Option 1(a) - Criteria for identifying areas that qualify as SNAs: The emphasis would be on the criteria set out within the NPSIB (i.e., representativeness, diversity and pattern, rarity and distinctiveness and ecological context criteria).
 2. Option 1(b) - Assessment and identification processes: The focus would be on how territorial authorities assess potential SNAs in their area as well as the requirement for them to identify these areas in their plans. The emphasis could be on the processes for identification of SNAs, including mechanisms for working with landowners.
 3. Option 1(c) - Management of adverse effects: The focus would be on the NPSIB requirements for managing adverse effects on SNAs from development and activities. The emphasis could be on the requirement to avoid adverse effects, the effects management hierarchy, exemptions, consenting pathways and bespoke management approaches (such as for farming and forestry).
- ii. Option 2 – Comprehensive review of the NPSIB: This would be a comprehensive review of the policy settings and provisions of the NPSIB. This Option would take between 18-24 months to complete the review and make subsequent changes to the NPSIB. This timeframe would increase uncertainty and complexity for councils. It would also miss the opportunity for alignment with other instruments of national direction afforded by being part of the NDP. However, it would ensure that all the NPSIB provisions align and give scope to improve its workability.
 - iii. Option 3 – Alignment with Phase 3 of RM reform: The initial focus would be to review indigenous biodiversity protection under the RMA. Reconsideration of the role and function of the NPSIB within the revised resource management system may then be required. This option would take longer than Option 2, with scoping for Phase 3 of RM reform due to commence in June 2024 for delivery over the next few years. This Option increases uncertainty for councils, and as with Option 2 above it could not be progressed through the NDP. This option would, however, enable you to consider the legislative and policy environment together.

Process

12. Regardless of the option you choose, the review process will draw on a range of evidence and information, including (but not limited to) council planning provisions, case law, responses received to the exposure draft consultation, and evidence collected for the regulatory impact statement and evaluation of the NPSIB.
13. We think it is likely that we will need input from individuals with in-depth technical knowledge (e.g. ecological and planning expertise) as part of the review.
14. The development of subsequent detailed policy will require engagement to refine policy options, and help fulfil Treaty obligations, including those arising from Treaty settlements. The level and type of engagement will be determined by the scope, prior engagement as well as level of interest of stakeholders and Treaty Partners. We will

provide advice on the statutory process¹ and engagement requirements when policy options are being considered.

15. The time required to undertake the review will be dependent on scope, process and priorities. A narrowly focussed review could be delivered relatively quickly (with policy decisions potentially in line with NDP timelines), whilst a wider review, will take longer, with policy decisions likely to occur in 2025.
16. If your preference is to utilise the efficiencies of NDP² then a very narrowly focussed review (Option 1(a) and or 1(b)) provides that opportunity, due to the tight timelines. Using the NDP will provide greater certainty at pace.
17. There is still an opportunity to progress changes separately to the NDP work, which could be utilised to deliver Option 1(c). If you are looking to address issues with the management of adverse effects on SNAs.
18. If your preference is to consider wider issues with the NPSIB, then Options 2 or 3 provide that opportunity. However, these options would take longer, and require more resources overall.
19. If you want the review to consider a wider set of issues in relation to how biodiversity could be managed under a new resource management system, then Option 3 would be most appropriate. Changes following the review would be built into the phase 3 work programme, rather than delivered in phase 2. Option 3 results in uncertainty about policy settings for longer, but would potentially reduce the number of changes being made to policy settings overall.

Te Tiriti analysis

20. A Treaty Impact Assessment has not been undertaken to assess the recommendations within this briefing. A Treaty Impact Analysis will be undertaken as part of the policy development stage.

Other considerations

Risks and mitigations

21. Most of the stakeholders and Treaty Partners officials met in March 2024 (on the proposed three-year suspension of identifying new significant natural areas) indicated a strong desire to be involved with the review [BRF-4519 refers], with some indicating a desire to engage in scoping of the review. This is likely to be the key risk to mitigate.

¹ Any changes to the NPSIB identified through the review will require implementation in line with statutory and Cabinet requirements, reflecting Treaty of Waitangi obligations, and any relevant Treaty settlement obligations.

² For example, Regulatory Impact Analysis (RIA) is required to support Ministerial decisions on policy, which accompanies Cabinet policy papers. However, under the NDP proposed delegated decision model, RIA will be incorporated into official's advice to decision-making Ministers.

22. As detailed earlier, a number of factors will need to be considered in determining the nature of the engagement and communication with stakeholders and Treaty Partners.
23. We will provide advice on engagement requirements once policy options have been considered. Early engagement, including communication, can help to understand and address concerns which could, if unknown, lead to litigation or criticism from stakeholders and / or Treaty Partners. To the extent possible, we will co-ordinate engagement with NDP.

Legal issues

24. No legal issues have been identified in relation to this stage of determining the scope of the review. If legal issues do arise, we will provide advice on the issue.

Financial implications

25. Whilst there are no immediate financial implications for the Government, there will be resourcing implications, which are considered in the analysis.

Next steps and timelines

26. Based on the preferred approach, officials will develop a more detailed timeline.