

Submission on suspending requirements in the National Policy Statement for Indigenous Biodiversity

Federated Farmers of New Zealand

27 March 2024



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**SUBMISSION ON PROPOSED CHANGE TO THE NATIONAL POLICY STATEMENT FOR
INDIGENOUS BIODIVERSITY 2023**

TO: MINISTRY FOR THE ENVIRONMENT
indigenousbiodiversity@mfe.govt.nz

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ADDRESS FOR SERVICE

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1. SUMMARY OF KEY RECOMMENDATIONS

Federated Farmers submission can be broadly summarised as follows:

- 1.1 We support the proposal to suspend cl 3.8, 3.9, 4.1 and 4.2 of the National Policy Statement for Indigenous Biodiversity (NPSIB). However, we are concerned that suspending these clauses alone will not solve major problems with the workability of the NPSIB on private land.
- 1.2 In addition to suspending cl 3.8, 3.9, 4.1 and 4.2, we recommend the following changes to the NPSIB:
 - a) Including a policy that provides for the role that landowners play as stewards of indigenous biodiversity on their land under cl 2.2, to give effect to Objective 2.1 (1)(b)(ii);
 - b) Narrowing and limiting criteria for identifying *Significant Natural Areas* ('SNAs') in the NPSIB (Appendix 1). At present, the SNA assessment criteria necessitate complex, subjective assessments that risk capturing an overly burdensome array of flora and fauna as 'significant' and may result in endless litigation, with significant delays and costs for farmers and landowners seeking to undertake day-to-day farming activities on private land, for what amounts to little or no environmental benefit;
 - c) Deletion of requirements to identify and protect areas used by specified highly mobile fauna under cl 3.20 where these areas are on private land, unless landowners are compensated for the inability to utilise their land;
 - d) Deletion of restoration of areas that provide important connectivity and buffering functions under cl 3.21, where these are on private land unless landowners are compensated for the inability to utilise their land;
 - e) Deletion of the requirement for regional councils to set targets for indigenous vegetation cover for non-urban environments in cl 3.22(3). There are too many difficulties for regional councils to comply with this requirement, for example:
 - Assessing what qualifies as 'indigenous vegetation cover' especially if people want to plant native species (i.e. manuka/kanuka, flax etc) for harvesting,
 - Practicality of being able to meet targets because of unavailability of suitable plants,
 - Practicality of determining which areas are to be converted to indigenous vegetation cover, especially if targets cannot be met using public land alone,
 - Where private land is needed to meet the target, loss of private property rights including being able to use land for primary production.
 - f) Deletion of cl 3.17. Consider reverting to the provisions in cl 3.12 of the 2019 Draft NPSIB for a requirement on councils to recognise pastoral farming as an existing activity (including allowing clearance of indigenous vegetation as part of pasture maintenance in their district and regional plans and policy statements.
 - g) Reframing the entire Policy Statement to place greater emphasis on non-regulatory methods to achieve the desired Objective, such as building relationships with landowners and providing them with encouragement and incentives to protect and restore areas of indigenous biodiversity.
- 1.3 We stand by our previous commitment to the Biodiversity Collaborative Group (BCG), which

undertook much of the background work on the 2019 Draft National Policy Statement on Indigenous Biodiversity ('NPSIB 2019'). However, we consider the NSPIB 2022 has gone considerably beyond that work in many key places.

2. GENERAL COMMENTS

- 2.1 Setting the criteria for SNAs at the right level is critical to the success or failure of the policy statement's Objective. If the threshold for significance is set too low, the Policy Statement will be effectively 'unworkable' and a wide variety of biodiversity will end up being unnecessarily regulated, leading to increased compliance costs and delays, inefficient administration, and inequities in resource allocation. Repercussions could be vast – with many farming operations unable to continue operating as viable units; and with insufficient resources, capacity and capability across councils (particularly within consenting teams) there will be failures in prioritising, inconsistent implementation, and fatigue with the process. If everything is deemed important, it very quickly becomes that nothing is treated as such.
- 2.2 As matters currently stand in the NPSIB, the assessment criteria for SNAs are highly complex, necessitating subjective assessments that risk capturing an overly burdensome array of flora and fauna as 'significant'. The uncertainty and complexity in these assessments imply the need for capacity for expert technical assessment that is limited in New Zealand. There is potential for endless litigation and dispute over what constitutes a SNA, with significant delays and costs for farmers and landowners who are merely seeking to undertake day-to-day farming activities on private land, for what amounts to little or no environmental benefit.
- 2.3 We are highly concerned with the carve-outs for specified sectors and ownership types in the NPSIB, particularly as these sit alongside removal of existing use rights for farming (from what was in the earlier draft NPSIB 2019). Recognition of existing use rights for farming is key to ensuring economic viability of restoration and enhancement of indigenous biodiversity on privately-owned farmland (which represents the single biggest land use by area within NZ¹). Farms must continue to function economically for active protection and management actions to occur. New Zealand farmers do not get subsidies to farm. Managing indigenous biodiversity solely through regulation is unworkable.
- 2.4 Under cl 3.17 of the NPSIB, the presumption is that the burden of evidence to demonstrate that maintenance of improved pasture is part of a regular cycle of farming lies with landowners/farmers. This is highly unfair, given the carve-outs for other sectors and groups who don't have to comply with the NPSIB. Clause 3.17 should be deleted. We suggest that the provisions in cl 3.12 of the 2019 Draft NPSIB that required all councils to recognise pastoral farming as an existing activity (including allowing clearance of indigenous vegetation as part of pasture maintenance), are preferable to the provisions that have ended up in cl 3.17 of the operative NPSIB.

¹ Farmland dominates land use in New Zealand, with 45% of total land area (12.1 million ha) utilised for agriculture and horticulture (with 7.8 million ha being grassland). Pearson D, (2020) *Key Roles for Landscape Ecology in Transformative Agriculture Using Aotearoa—New Zealand as a Case Example*, in *Land* 2020, 9(5), 146; <https://www.mdpi.com/2073-445X/9/5/146> (accessed 19 March 2024).

- 2.5 The NPSIB fails to recognise that, like urban communities, farmers' attitudes to the environment and to protecting biodiversity have changed. Much of New Zealand's biodiversity remains because landowners have long been custodians of indigenous biodiversity on their land. The NPSIB 2023 needs to focus on supporting land management in an appropriate way to encourage biodiversity enhancement and restoration, not derail it.
- 2.6 Key to the success of any NPS on Indigenous Biodiversity is the establishment and maintenance of 'trust' between landowners and councils. This relies heavily on an approach of partnership, respect and inclusion of impacted landowners on all matters that relate to private land. Without this, there are real risks of eroding the social capital that is deeply connected to biodiversity outcomes. Establishing the respective costs and benefits is key, including considering where the costs should lie for what is, essentially, a public good.
- 2.7 The relationship between landowners and councils is 'cemented' into the NPSIB in cl 3.2 – *local authorities must engage with tangata whenua, people and communities (including landowners) to ensure that the decision-making principles inform and are given effect to, when implementing this National Policy Statement in their regions and districts*. Whilst the NPSIB provides extensive direction on how local authorities must involve tangata whenua in the management of indigenous biodiversity (cl 3.3), it is curiously silent on the relationship between landowners, who are kaitiaki of large amounts of indigenous biodiversity in New Zealand, and councils. Federated Farmers notes there is an absence of a Policy under cl 2.2 that recognises and provides for the role that landowners play as stewards of indigenous biodiversity on their land. Without such a policy, it's difficult to see how Objective 2.1(1)(b)(ii) *by recognising people and communities, including landowners, as stewards of indigenous biodiversity* can be achieved.
- 2.8 Attempting to save everything through regulation is impractical and unlikely to work in practice. Restoration of indigenous biodiversity comes at considerable financial and resourcing costs and should remain voluntary. Making restoration mandatory will ultimately fail because there is insufficient capability and support for private landowners to make that workable. There must be appropriate prioritisation of resources and efforts, with encouragement and incentivisation provided and enabled.
- 2.9 Protection of biodiversity must occur within a broader spectrum of biodiversity management tools. These should include low-intervention non-regulatory tools, such as information, education, funding assistance and other incentives, working upwards as necessary through to regulation, or at the high-intervention end of the spectrum, property acquisition by public agencies in situations where indigenous biodiversity values are deemed significant enough to warrant careful hands-on management by Government agencies or specifically established and resourced groups.
- 2.10 Indigenous biodiversity management should be shaped to sustainably manage and protect significant biodiversity values, while non-regulatory methods should be used to encourage the on-the-ground gains for other biodiversity, through advice, support, partnerships and incentives. Costs of any regulatory proposals must not be underestimated, and a balance

must be struck between regulation and sustainable use and development of land, including enabling the continuation of primary production across the country.

2.11 As part of our involvement in the BCG for the NPSIB 2019, Federated Farmers received significant feedback from farmers across the country. This feedback was presented in our previous submission and is still valid. We expect that individual submissions from landowners, and feedback from industry and rural groups on behalf of farmers, will also help tell the picture of how our biodiversity management is currently working, and where any gaps or risks are. We urge that sufficient weight is given to these submissions. The success or failure of the NPSIB process relies on whether landowners buy-in and get on-board the process or not.

2.12 Partnerships with landowners and relevant incentives and support will be crucial into the future. We strongly encourage Government to recognise the importance of having adequate complementary supporting measures in place alongside the regulatory package. We suggest the following:

- Prioritising the need to confirm sufficient carbon sequestration or incentive opportunities for indigenous biodiversity, or other incentive schemes that will help address both climate change and biodiversity issues. This may be through a separate scheme, as recently contemplated by the Climate Change Commission, or confirmed under He Waka Eke Noa (HWEN) or the Emissions Trading Scheme (ETS). This could be of particular importance to areas like tussock grasslands or regenerating native scrub. Given increasing concerns with Greenhouse Gas Emission (GHG) charges, and concerns around the alternative being a monoculture of pines, these incentives or support measures would go a long way to securing a win/win for biodiversity and climate change outcomes.
- Ensuring sufficient information, advice, and knowledge is provided to landowners, to support and enable them to incorporate biodiversity into their day-to-day farm management.
- Ensuring sufficient monitoring and reporting of biodiversity outcomes to enable tracking of success/failure of initiatives/progress, so that these can be built upon.
- Ensuring sufficient national and local government commitment to plant and animal pest control on both public and private land.
- Ensuring support for landowners undertaking voluntary management of indigenous biodiversity habitats on privately-owned land that goes beyond regulatory requirements.
- 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 regarding 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. Access to such funding should be clearly available for landowners and legitimate community groups to access from regional or local authorities or regionally-situated Government agencies.

- Consideration of how tax incentives, and/or Transferable Development Rights could be provided to encourage, or remove barriers to, expenses associated with private biodiversity efforts and to provide recognition and support to those who shoulder the burden for protecting indigenous biodiversity.
- Amendments, funding or otherwise clarification on the Local Government Act regarding rates relief for both QEII covenanted land and identified SNAs.

2.13 Biodiversity and productive farm systems can, and do, work hand-in-hand. A win for farming can be a win for biodiversity and climate change, and we urge the Government to keep an open mind in this regard. For Federated Farmers, success of the NPSIB will be that in the years to come, landowners celebrate having an SNA on their properties and it is seen as an asset to their farming systems.

2.14 A strong driver behind the establishment of the NPSIB was to give consistency to councils' implementation of the RMA for biodiversity, and to reduce costly time-consuming litigation for councils, landowners, tangata whenua and community groups. Within our submission, we highlight areas where we see this driver being jeopardised by possible confusion and uncertainty.

2.15 The NPSIB covers both private and public land. However, SNA assessments should not be carried out solely at ratepayers' expense through local authority processes. Where the conservation estate contains SNAs, a different approach must be taken, and our preference is for the resourcing or financing of such assessments to come from the Department of Conservation.

2.16 The implementation of the NPSIB across the country will ultimately define the success or failure of its Objective. Quality, succinct and robust guidance is needed alongside the NPSIB, to clarify those matters that are currently ambiguous or raising more questions than answers. We do not consider the current proposed implementation approach sufficiently meets these expectations.

2.17 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.

2.18 We strongly recommend officials and decision-makers read our previous submissions to the NPSIB, which includes independent ecological advice, concerns and recommendations from Boffa Miskell in regard to this process. This advice aligns with submissions we have seen from a range of councils, particularly those most likely to be impacted.

2.19 Government must give significant weight to both landowners and local government capability and resourcing required, given the success of implementing the NPSIB is equally as reliant on who is implementing it, as it is on the provisions of the national policy statement itself.

2.20 The requirements for protecting specified highly mobile fauna in clause 3.20 of the NPSIB

present an unworkable degree of intrusion on private farmland. As matters stand in the NPSIB, huge tracts of private land could be subject to requirements to halt day-to-day farming activity because a protected bird species happens to land on private farmland while foraging/hunting or migrating.

- 2.21 Similarly, the requirements for restoration of *areas that provide important connectivity and buffering functions* under cl 3.21 of the NPSIB also present an unworkable degree of intrusion on private farmland. There is potential for significant difference between experts' interpretations about the extent and importance of areas outside SNAs that provide connectivity and buffering functions. The high degree of uncertainty in establishing the extent of these areas (let alone the type of restrictions on land use that may be required in each case) effectively makes requirements to comply with these unworkable.
- 2.22 The requirement for regional councils to set targets for indigenous vegetation cover for non-urban environments in cl 3.22(3) is also impractical and unworkable. There are too many difficulties for regional councils to comply with this requirement, for example:
- Assessing what qualifies as 'indigenous vegetation cover' especially if people want to plant native species (i.e. manuka/kanuka, flax etc) for harvesting;
 - Practicality of being able to meet targets because of unavailability of suitable plants;
 - Practicality of determining which areas are to be converted to indigenous vegetation cover, especially if targets cannot be met using public land alone;
 - Where private land is needed to meet the target, loss of private property rights including being able to use land for primary production.

Submission Ends