



Forest & Bird

TE REO O TE TAIAO | *Giving Nature a Voice*

FEEDBACK ON PROPOSED SNA SUSPENSION

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1. The Royal Forest and Bird Protection Society of New Zealand Inc (Forest & Bird) has been Aotearoa New Zealand's independent voice for nature since 1923. Forest & Bird's constitutional purpose is:
To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.
2. On 19 March 2024, Forest & Bird along with other members of the Biodiversity Collaborative Group attended a brief information session run by Ministry for the Environment officials of proposed amendments that will suspend or otherwise delay the requirements in clauses 3.8 and 3.9 ("**proposed amendments**") of the National Policy Statement for Indigenous Biodiversity ("**NPSIB**").
3. The proposed amendments are myopic, driven by perceived benefits to landowners and developers rather than being centred on effective sustainable management. Forest & Bird is disappointed it has received very limited engagement from the Ministry for the Environment on the proposed amendments, particularly given that Forest & Bird was a key stakeholder in the development of the National Policy Statement for Indigenous Biodiversity, further addressed in this feedback.
4. While we intend to engage at the Select Committee, it appears to us the outcomes are predetermined.
5. Forest & Bird is also disappointed at the limited time for feedback on the proposed amendments. It has, nonetheless, endeavoured to provide initial high-level concerns addressing:
 - a. The lack of evidence behind the proposed amendments.
 - b. The overriding of the BCG process.

- c. Lack of consultation.
- d. Lack of certainty.
- e. International obligations

Amendments not grounded in evidence

6. Forest & Bird is astonished to hear that there has been no ecological input or expert evidence in the lead up to decisions by Cabinet to suspend mapping requirements under the NPSIB. Policy needs to be underpinned by credible evidence to be effective and enduring.¹ Unfortunately, the proposed amendments fall short of this fundamental necessity, and simultaneously puts Aotearoa New Zealand's most significant, rare, and threatened indigenous biodiversity at further risk of degradation.

Overrides agreements reached in the biodiversity collaborative group (BCG)

7. The Biodiversity Collaborative Group was a stake-holder lead group established in 2017. It was tasked with preparing the draft NPSIB and complementary measures to support its implementation.
8. Membership was diverse and included the Environmental Defence Society, Forest & Bird, Federated Farmers Inc, New Zealand Forestry Association, and representative of the Iwi Chairs Forum through the Pou Taiao Advisors Group, and representatives from infrastructure industries.
9. Stakeholders, including Forest & Bird, put in substantial time and effort in the BCG process. Compromises were made by all participants in order to reach agreement. Thus in some respects the NPSIB represents a "package" whereby Forest & Bird has accepted trade-offs in order to achieve collective support.
10. The suspension of SNA mapping, particularly via rushed legislation, further reduces protective elements of the NPSIB and undermines the long collaborative processes. To go from previously facilitating stakeholder collaboration in the decision-making processes to the current process of policy-making at whim reduces legitimacy of Government decision-making.

Lack of consultation

11. Related to the above points, Forest & Bird is concerned about the predetermined nature of the proposals and lack of meaningful consultation to date.
12. If further amendments to the NPSIB, including suspension of SNA mapping, is progressed, Forest & Bird requests that this be undertaken in accordance with section 46A(3)(a) of the Resource Management Act 1991. Preferably, that a Board of Inquiry process is followed to enable full consultation and decision-making informed by evidence.
13. In light of the previous BCG process for the NPSIB's development, Forest & Bird's position is that the need for meaningful engagement with stakeholder groups, Māori, and the wider public is even more pressing.

¹ <https://www.dpmc.govt.nz/our-programmes/policy-project/policy-advice-themes/evidence-and-evaluation>

14. To date, consultation has fallen short of the standards set out in the Cabinet endorsed Legislation Design and Advisory Committees “Legislation Guidelines” which explain:²

Policy is also better when it is informed by genuine consultation. Legislation is information-intensive and ensuring it is effective and reducing the risk of unintended consequences requires consultation at all stages. Consultation also assists the public to plan for change and supports the legitimacy of the law-making process.

The proposed amendments lead to uncertainty and unintended consequences

15. The mapping of SNAs provides certainty for the community including for landowners and developers. The failure to map SNAs leads to both:
- a. Inconsistent approaches to their identification; and
 - b. Litigation over what constitutes a SNA under section 6(c) of the Resource Management Act 1991.
16. Without SNA mapping, the onus is shifted upon stakeholders and the wider community to bring proceedings as well as provide expert evidence to ensure section 6(c) matters are addressed.
17. Forest & Bird notes that section 6(c) remains a safeguard for indigenous biodiversity in such processes and accepts that indigenous biodiversity does not need to be mapped in order to be protected.³ Nevertheless, suspending the mapping of SNAs will only drive further litigation to determine where SNAs are and defer the identification of SNAs to consent processes.⁴ The lack of clear boundaries as to where SNAs exist and resultant litigation provides uncertainty to all involved, including for landowners and developers.

International obligations

18. New Zealand is also a signatory to international obligations relating to indigenous biodiversity, including, but not limited to:
- a. The Convention on Biological Diversity (**CBD**) which has the main goals of
 - i. Conservation of biodiversity;
 - ii. Sustainable use of biodiversity; and
 - iii. Fair and equitable sharing of the benefits arising from the use of genetic resources.
 - b. The Ramsar Convention on Wetlands (**RAMSAR**) which provides for the protection of wetlands of international importance and the “wise use” of all wetlands.

² <https://www.ldac.org.nz/assets/Guidelines/LDAC-Legislation-Guidelines-2021-edition.pdf>

³ *Opoutere Ratepayers and Residents’ Association v Waikato Regional Council* [2015] NZEnvC 105 at [71]: *We agree with Mr Milne that identify has a wider meaning than map and that mapping is a way of identifying something, but it is not the only way in which something can be identified. An area could be identified by words for example. Expressed another way; mapping is a subset of identifying.*

⁴ See *Weston Lea Ltd v Hamilton City Council* [2020] NZEnvC 189, where the Environment Court confirmed that protection of bat habitat, while not identified in the plan, was a matter of national importance to be considered per section 6(c) of the Act.

19. Forest & Bird's view is that the proposed amendments are inconsistent with both conventions. While it is trite that to have effect in New Zealand international obligations must be incorporated into New Zealand law, inconsistency with international obligations will nevertheless place New Zealand's international reputation at risk.