



PROACTIVE RELEASE COVERSHEET

Minister	Hon James Shaw	Portfolio	Environment
Name of package	Gazettal of National Policy statement for Indigenous Biodiversity	Date to be published	10/11/2023

List of documents that have been proactively released

Date	Title	Author
14 November 2019	Minute ENV-19-0063: National Policy Statement for Indigenous Biodiversity,	Cabinet Environment, Energy and Climate Committee
18 November 2019	Cabinet Minute CAB-MIN-0598: National Policy Statement for Indigenous Biodiversity	Cabinet Office
19 December 2023	Cabinet paper CAB-22-SUB-0600: National Policy Statement for Indigenous Biodiversity,	Ministry for the Environment
19 December 2023	Cabinet Minute CAB-22-MIN-0600: Minute of Decision National Policy Statement for Indigenous Biodiversity	Cabinet Office
29 May 2023	Cabinet paper CAB-23-SUB-0202: Approval of National Policy Statement for Indigenous Biodiversity	Ministry for the Environment
29 May 2023	Cabinet paper CAB-23-SUB-0202: Approval of National Policy Statement for Indigenous Biodiversity Appendix 3 Treaty of Waitangi Analysis, Ministry for the Environment	Ministry for the Environment
29 May 2023	Cabinet Minute CAB-23-MIN-0202: Minute of Decision National Policy Statement for Indigenous Biodiversity	Cabinet Office
6 June 2023	Cabinet Minute CAB-23-MIN-0225: Minute of Decision National Policy Statement for Indigenous Biodiversity, Cabinet	Cabinet Office

Note that:

Cabinet paper CAB-22-SUB-0600 Appendices: 1 (NPSIB), 2 (Implementation Plan), 3 (Treaty of Waitangi Analysis Report), 5 (Regulatory Impact Statement) and 6 (section 32 Report) of this Cabinet paper are not proposed to be proactively released as they were either superseded by later versions or are already publicly available.

Cabinet paper CAB-23-SUB-0202: Appendices 1 (NPSIB), 4 (Regulatory Impact Statement), 5 (Addendum to National Policy Statement for Indigenous Biodiversity: Evaluation Report under section 32 of the RMA (Resource Management Act), November 2022), and 6 (Implementation Plan) of the Cabinet paper were made publicly available as part of the NPSIB gazettal announcement so do not need to be proactively released.

Information redacted**YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of reasons for redaction

Some parts of cabinet paper have already been released. Other parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Redactions made in the Cabinet paper have been made in accordance with the Act; section 9(2)(f)(iv) to maintain the constitutional convention which protects the confidentiality of advice tendered by Ministers and officials, section 9(2)(h) to maintain legal professional privilege and sections 9(2)(g) and 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions to Ministers of the Crown in the course of their duty, sections 9(2)(a) to protect privacy and section 9(2)(ba)(i) information supplied in confidence by a third party.

Minute of Cabinet Environment, Energy and Climate Committee

ENC-19-0063: National Policy Statement for Indigenous Biodiversity



Cabinet Environment, Energy and Climate Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

National Policy Statement for Indigenous Biodiversity

Portfolio Associate Environment (Hon Nanaia Mahuta)

On 14 November 2019, the Cabinet Environment, Energy and Climate Committee:

- 1 **noted** that New Zealand's indigenous biodiversity is in crisis and that the government is currently developing a refreshed New Zealand Biodiversity Strategy as an overarching framework to address this crisis;
- 2 **noted** that the Biodiversity Strategy needs to be underpinned by a clear regulatory approach to halt the further decline of indigenous biodiversity;
- 3 **noted** that the proposed National Policy Statement for Indigenous Biodiversity (NPSIB) can provide this approach for terrestrial biodiversity, supported by other national direction instruments under the Resource Management Act 1991 (RMA);
- 4 **noted** that the proposed NPSIB largely reflects the policy direction of the Biodiversity Collaborative Group, that included members representing Federated Farmers, Forest and Bird, the Environmental Defence Society, the Forest Owners Association and representatives from the extractive and infrastructure industries, as well as the Pou Taiao Iwi Leaders Group, for the Iwi Chairs Forum;
- 5 s 9(2)(f)(iv)
- 6 **noted** that the proposed NPSIB includes the following provisions:
 - 6.1 a requirement for councils to take into account the principles of the Treaty of Waitangi and engage with tangata whenua on biodiversity in plans;
 - 6.2 a foundational concept of Hutia Te Rito and a requirement for councils to recognise and provide for Hutia Te Rito;
 - 6.3 a requirement for Significant Natural Area (SNA) identification and mapping to be undertaken by district councils, following principles with their communities such as partnership and transparency, to assess sites using four ecological criteria;
 - 6.4 an 'avoid' policy for effects management inside SNAs for most new activities, where four key adverse effects to biodiversity must be avoided, and other adverse effects can be avoided, remedied, mitigated, offset, or compensated;

- 6.5 alternative effects management for geothermal ecosystems, nationally significant infrastructure, activities on Māori-owned land, single dwellings, and plantation forest SNAs;
 - 6.6 geothermal and plantation forest SNAs;
 - 6.7 providing for existing activities in plans including flexibility for pastoral farming;
 - 6.8 broad parameters for the management of biodiversity outside of SNAs, where and as necessary to maintain biodiversity overall;
 - 6.9 a precautionary approach to biodiversity management where information is uncertain or unknown, and a requirement for councils to consider impacts of climate change on biodiversity;
 - 6.10 provisions for information gathering and managing effects on highly mobile fauna;
 - 6.11 restoration and enhancement policies, which are largely developing and implementing collaborative regional biodiversity strategies, promoting restoration to communities, and introducing restoration targets for biodiversity-depleted and urban areas;
 - 6.12 a requirement for councils to have methods to monitor key aspects of biodiversity;
- 7 **noted** that there will be implementation costs to councils and some landowners to implement the NPSIB, and that many of the costs could be mitigated through central government support for councils and landowners;
- 8 **noted** that:
- 8.1 extensive feedback on implementation support is expected;
 - 8.2 the Associate Minister for the Environment (Hon Nanaia Mahuta) will report back to Cabinet in 2020 with policy and resourcing recommendations, and may seek budget for implementation;
- 9 **noted** that officials will update the Cost Benefit Analysis following consultation and further analysis of cumulative impacts of this and other policy proposals;
- 10 **noted** that the Associate Minister for the Environment will follow a Minister-led process for finalising the NPSIB under delegation from the Minister for the Environment;
- 11 **noted** that the Associate Minister for the Environment is withdrawing the proposed 2011 NPSIB, in line with section 51A of the RMA;
- 12 **agreed** to release the discussion document, Section 32 / Cost Benefit Analysis and Regulatory Impact Statement alongside a proposed NPSIB, attached to the paper under ENV-19-SUB-0063, for the purposes of public consultation from approximately 25 November 2019 to 14 March 2020;
- 13 **noted** that engagements and hui will take place between early February and mid-March 2020 to support public consultation, and that this process will be supported by Biodiversity Collaborative Group members;

- 14 **agreed** that the Associate Minister for the Environment may make minor amendments to the discussion document, including to the title, before its release.

Vivien Meek
Committee Secretary

Present:

Hon Dr Megan Woods
Hon David Parker (Chair)
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Shane Jones
Hon James Shaw
Hon Eugenie Sage

Officials present from:

Officials Committee for ENV

Hard-copy distribution:

Associate Minister for the Environment (Hon Nanaia Mahuta)

Cabinet Minute

CAB-MIN-0598: National Policy Statement for Indigenous Biodiversity



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Environment, Energy and Climate Committee: Period Ended 15 November 2019

On 18 November 2019, Cabinet made the following decisions on the work of the Cabinet Environment, Energy and Climate Committee for the period ended 15 November 2019:

Out of scope

ENV-19-MIN-0063	National Policy Statement for Indigenous Biodiversity	CONFIRMED
	Portfolio: Associate Environment (Hon Nanaia Mahuta)	

Out of scope

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:
Cabinet Environment, Energy and Climate Committee

Cabinet paper

CAB-22-SUB-0600: National Policy Statement for Indigenous Biodiversity

Office of the Associate Minister for the Environment (Biodiversity)

Chair, Cabinet

National Policy Statement for Indigenous Biodiversity

Proposal

- 1 This paper seeks Cabinet's approval of the National Policy Statement for Indigenous Biodiversity 2022 (NPSIB), prepared under the Resource Management Act 1991 (RMA).
- 2 The NPSIB will require councils to identify and map significant natural areas (SNAs) and develop provisions in their plans and policy statements to avoid or manage effects on SNAs. They will need to ensure indigenous biodiversity is maintained, requiring at least no reduction nationally, and restoration where appropriate.
- 3 The NPSIB will improve consistency and strengthen and underpin the requirements on councils to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as matters of national importance under the RMA.
- 4 Subject to Cabinet's agreement, I will recommend the NPSIB to the Governor-General in Council for approval, and then proceed to issue the NPSIB by notice in the New Zealand Gazette in December 2022.

Relation to government priorities

- 5 This workstream is core to the area of cooperation outlined in the Cooperation Agreement between the Labour Party and the Green Party, "Protecting our environment and biodiversity through working to achieve the outcomes of Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020".
- 6 The NPSIB supports Labour's 2020 Election Manifesto priority "Our Natural Environment", to protect, preserve and restore our natural heritage and biodiversity, and promote the recovery of threatened species.
- 7 The NPSIB is a key tool that gives effect to Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 (ANZBS). It also contributes to Te Pae Tawhiti: the whole-of-government approach connected to the Wai 262 claim and the subsequent Waitangi Tribunal report *Ko Aotearoa Tēnei*, which concentrates on the protection of mātauranga Māori and taonga-
- 8 The NPSIB will improve how significant indigenous vegetation and the significant habitats of indigenous species are protected, which is a matter of national importance under section 6 of the RMA.
- 9 The provisions of the NPSIB will support a key system outcome of the Government's resource management reforms: the protection and restoration of the ecological integrity, mana and mauri of indigenous biodiversity (Natural and Built Environment (NBE) Bill, cl 5). The NBE proposes a national planning framework (NPF), which will

require environmental limits to be set for indigenous biodiversity. Following its Gazettal, and once the NBE is enacted, the NPSIB will be transitioned into the NPF, along with other national direction, ^{s 9(2)(f)(iv)}

The effects management hierarchy and provisions relating to the protection of SNAs will be reflected in the NBE.

- 10 The significant biodiversity protection provisions of the NBE are complementary to the NPSIB and will extend the concept of identification and protection of areas into the freshwater and marine domains in an integrated way.
- 11 The NPSIB supports the Emissions Reduction Plan and National Adaptation Plan in supporting resilient, sustainable, inclusive, and prosperous communities. It provides national direction to councils to promote restoration and resilience of indigenous biodiversity to climate change, acknowledges the role indigenous biodiversity and ecosystems have in mitigating weather effects; and promotes increased indigenous vegetation cover to help mitigate climate change.
- 12 Tangata whenua involvement in implementation of the NPSIB, including the processes to identify and manage biodiversity and taonga species, is provided for. It also recognises barriers faced by Māori landowners when developing Māori customary and freehold land and Treaty settlement land that might contain significant indigenous biodiversity.

Executive Summary

- 13 Biodiversity is in decline worldwide. Aotearoa New Zealand is no exception – thousands of indigenous species are threatened with, or at risk of, extinction. Our indigenous biodiversity is unique and vital to supporting healthy ecosystems relied on for the benefit and wellbeing of communities. It is highly valued by New Zealanders and has significant cultural value.
- 14 In implementing the RMA councils are required as a matter of national importance, to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna.
- 15 A lack of national direction has led to inconsistent approaches in policy and decision making and poor processes for landowners and Māori. In addition, costly and extensive litigation for councils has led to inadequate regulatory protection contributing to ongoing biodiversity loss.
- 16 There have been multiple attempts to address the lack of national direction for biodiversity since 2000. This latest attempt was started in 2016 under the then Minister for the Environment, Hon Nick Smith, and has taken six years to get to this point.
- 17 The NPSIB was originally developed by the stakeholder-led Biodiversity Collaborative Group, including trustees from Forest and Bird and Federated Farmers. The Biodiversity Collaborative Group released their draft publicly in 2018. Since then, the NPSIB has been publicly consulted on in 2019/2020 and an exposure draft released for submissions in mid-2022.
- 18 The NPSIB (Appendix 1) will protect significant areas of indigenous biodiversity by requiring councils to identify and manage areas of significant indigenous vegetation and significant habitats of indigenous fauna. A streamlined approach for identifying SNAs is proposed for Public Conservation Land.

- 19 Councils will be required to develop provisions in their plans and policy statements to protect and manage SNAs and indigenous biodiversity and promote its restoration.
- 20 Iwi involvement has been critical to developing the provisions affecting Māori. A separate iwi/Māori implementation plan is being developed in partnership with iwi and hapū. It is expected to be delivered mid-2023, following an engagement and development process.
- 21 Complementary measures are critical to the success and support of the NPSIB. The accompanying implementation plan outlines a range of existing and new support measures (Appendix 2) based on BCG recommendations.
- 22 Three biodiversity pilot projects will focus on improving information availability, improving coordination of biodiversity effort and enabling innovative approaches to biodiversity management/restoration. Officials are also exploring market-based incentives for biodiversity protection and restoration with potential links to carbon markets.
- 23 \$19.46 million has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package. The biodiversity incentives work programme, funded initially by the Prime Minister's Emerging Priorities Fund, also supports the delivery of the package and seeks to establish the pilot projects.
- 24 This NPS has been long in the making. It's time to finish this and gazette it this year. Subject to Cabinet approval, the NPSIB will be notified in the New Zealand Gazette before the end of the year and come into effect 28 days later.

Background and Context

State of Aotearoa New Zealand's indigenous biodiversity

- 25 Biodiversity is in decline worldwide primarily due to development pressure; the impacts of introduced pests, invasive weeds and diseases; pollution; and the impacts of climate change.
- 26 One million (estimated) species on Earth are facing an increased risk of extinction. This is more than at any point in human history and the rate of extinction has been increasing for at least the last 40 years.¹
- 27 The biodiversity of Aotearoa New Zealand is unique and makes a significant contribution to global biodiversity. We are internationally recognised as a biodiversity 'hotspot' due to our high levels of endemism (species only found here). However, a 2010 global study ranked Aotearoa New Zealand amongst the 20 worst countries proportionally for environmental impacts, primarily because we have the highest proportion of threatened indigenous species in the world.²

¹ Information in this section has been taken from the IPBES global assessment 2019: <https://ipbes.net/global-assessment>.

² Bradshaw, Giam and Sodhi 2010; Evaluating the Relative Environmental Impact of Countries; PLOS ONE [Evaluating the Relative Environmental Impact of Countries | PLOS ONE](https://doi.org/10.1371/journal.pone.0155888)

- 28 More than 3,247 of our known indigenous, predominately terrestrial, species are threatened with extinction or at risk of becoming threatened, this includes:³
- 94 percent of reptile species
 - 80 percent of bat species
 - 75 percent of frog species
 - 74 percent of terrestrial bird species
 - 69 percent of mosses
 - 46 percent of vascular plant species
 - 35 percent of terrestrial invertebrates
 - 19 percent of hornwort and liverwort species
- 29 Many of these species are present within lowland and coastal areas. These areas are often in private ownership, and many of these areas currently have no or limited protection in place.

Strategic context: Aotearoa New Zealand Biodiversity Strategy and Te Pae Tawhiti

- 30 The ANZBS sets the overall direction for the protection, restoration and sustainable use of biodiversity. It also supports Aotearoa New Zealand to meet its international obligations under the United Nations Convention on Biological Diversity.
- 31 The NPSIB is a key tool for achieving the outcomes of the ANZBS. The Strategy requires development of a framework for identifying and prioritising high biodiversity value areas, which the NPSIB does. The NPSIB also provides direction to councils on the plan provisions, ways of working and monitoring requirements that will help meet the ANZBS outcomes.
- 32 The NPSIB is part of Te Pae Tawhiti the whole-of-government approach connected to the Wai 262 claim and the subsequent Waitangi Tribunal report *Ko Aotearoa Tēnei*, focused on the protection of mātauranga Māori and taonga. The NPSIB contributes to this by providing a strengthened role for tangata whenua in the management and decision making for indigenous biodiversity and taonga species. It also provides for the use of mātauranga Māori alongside science in managing biodiversity.

NPSIB development process

- 33 There has been a long and extensive engagement process to develop, test and refine the NPSIB.
- 34 National direction for biodiversity has been discussed since 2000, starting with the release of the 'Bio-what?' report. There have been several previous attempts to develop national direction, including most recently in 2011. These attempts have failed due to a lack of support.
- 35 This NPSIB was first developed by the stakeholder-led Biodiversity Collaborative Group, which was set up under ministerial direction to enable progress on issues where there were divergent views. The group was led by Forest and Bird and

³ [Extinction threat to indigenous land species | Stats NZ](#) (as referenced in Environment Aotearoa 2022)

Federated Farmers as trustees, and included representatives from iwi/Māori, industry, environment organisations, and council observers.

- 36 The group delivered a draft NPSIB to the Government in October 2018. The consensus of these stakeholders on the draft has given the continued development of the NPSIB a strong foundation on which to build.
- 37 The NPSIB was further developed and tested by officials under the direction of the former Associate Minister for the Environment, Hon Nanaia Mahuta. Cabinet agreed to release a proposed NPSIB for public consultation between November 2019 and March 2020 (ENV-19-MIN-0063 refers).
- 38 The 2019/2020 consultation included nationwide hui and attracted over 7,000 submissions. The majority of submissions supported the direction of the NPSIB and its broad intent. Changes were made to the proposed NPSIB in response to public submissions and hui feedback. A summary of submissions was released on 31 August 2020.
- 39 Cabinet subsequently agreed to release an exposure draft NPSIB for targeted consultation in mid-2022 (DEV-22-MIN-0101 refers). The exposure draft process enabled interested parties to make further submissions on its workability. The final NPSIB attached to this Cabinet paper is a product of this process.

Regulatory context: Resource Management Act 1991

- 40 Under the RMA, councils must recognise and provide for areas of significant indigenous vegetation and significant habitat of indigenous fauna as a matter of national importance (s6) and maintain indigenous biodiversity more generally (s30 and s31). This is typically achieved through objectives, policies and rules in council plans and the identification and management of SNAs or equivalent.
- 41 However, the RMA does not define 'significance' or specify how to manage impacts on biodiversity. This has led to different interpretation, application and monitoring by councils, which has led to repeated litigation costs, uncertainty and an undervaluing of indigenous biodiversity in decision-making. Inconsistent application of the RMA and inadequate regulatory protection are contributing to the loss of our indigenous biodiversity.
- 42 Some councils have done a good job of identifying SNAs and incorporating measures within their plans to protect these areas. I want all councils to go through this process to ensure that there is a consistent approach to the identification, management and protection of SNAs throughout Aotearoa New Zealand.
- 43 The NPSIB will provide detailed direction to councils on the plan provisions required to give effect to Part 2 of the RMA, and their functions under sections 30 and 31 of the RMA.
- 44 While the RM Reforms are being implemented, the RMA will remain in force. The NPSIB will provide policy direction to better give effect to the requirements of the RMA. It will also secure the protection of indigenous biodiversity during the transition to the new resource management system under the NBE.

The National Policy Statement for Indigenous Biodiversity

- 45 The intent of the NPSIB is to protect, maintain and restore indigenous biodiversity requiring at least no further reduction nationally. It recognises the intrinsic value and mauri of indigenous biodiversity as well as people's connections and relationships with it.
- 46 It does this by:
- 46.1 raising the importance of indigenous biodiversity in decision-making;
 - 46.2 improving the regulatory controls for the management of indigenous biodiversity;
 - 46.3 improving alignment between district and regional councils and clarifying their roles and responsibilities;
 - 46.4 clarifying minimum standards required to identify and maintain biodiversity in decision-making;
 - 46.5 focusing on terrestrial indigenous biodiversity for all land tenures including public, private and Māori land and setting out a mitigation hierarchy called the effects management hierarchy; and
 - 46.6 setting out a framework to enable councils and tangata whenua to work together to identify ecological taonga and develop provisions to manage development and use within SNAs on Māori lands.
- 47 The NPSIB will require councils to:
- 47.1 consistently identify and map areas with significant indigenous vegetation and habitats of significant indigenous fauna (SNAs) using criteria set out in the NPSIB clause 3.8 and Appendix 1;
 - 47.2 include provisions in plans and policy statements to:
 - 47.2.1 maintain indigenous biodiversity and avoid or manage adverse effects of new subdivision, development, and use on indigenous biodiversity within SNAs;
 - 47.2.2 manage the impacts on indigenous biodiversity outside of SNAs; and
 - 47.2.3 record areas outside of SNAs that are highly mobile fauna areas;
 - 47.3 set out the effects that need to be avoided in SNAs and provide a consenting pathway for addressing other effects through the effects management hierarchy;
 - 47.4 promote restoration of degraded SNAs and threatened and rare ecosystems, prepare regional biodiversity strategies and plan to increase indigenous vegetation cover; and
 - 47.5 undertake monitoring of indigenous biodiversity.
- 48 The NPSIB will balance the potential for losses, due to activities and exemptions provided for social, economic and cultural wellbeing, with the effects management

hierarchy, in particular the net gains required by offsetting and compensation, and the requirement for councils to promote restoration of indigenous biodiversity.

- 49 In practice no overall reduction could translate to no net reduction as there will be overs and unders depending on the activity or proposal. This supports the objective of at least no overall reduction in indigenous biodiversity.
- 50 Given the timeframes for councils to identify and protect SNAs (5 years) and implement the NPSIB (8 years to give full effect to the NPSIB) there is a risk that some indigenous biodiversity may be lost during that time in districts where there is currently limited protection. However, it should be noted that sections 6, 30 and 31 of the RMA would still apply and councils should be providing protection to indigenous biodiversity both in their decision-making and through their policies and plans.

Providing for environmental, social, economic and cultural wellbeing

- 51 The NPSIB recognises that some activities that are important for social, economic and cultural wellbeing may need to take place within SNAs.
- 52 Specific management approaches for certain land uses are provided for, including maintenance of improved pasture, plantation and indigenous forestry, activities on Māori lands, and within geothermal SNAs. In these cases, alternative management regimes are provided for that enable activities to continue subject to certain conditions.
- 53 Certain activities that have regional or national public benefit are also provided with a consenting pathway for:
- 53.1 infrastructure for lifeline utilities (including renewable energy generation and electricity transmission);
- 53.2 infrastructure needed to support the National Policy Statement on Urban Development (NPSUD) housing growth objectives for urban environments; and
- 53.3 some mining and aggregate extraction activities.

Interactions with other national direction and statutes

- 54 Interaction will occur with other statutes and national direction. The NPSIB has been developed to align, where appropriate, with: the National Policy Statement for Freshwater Management (NPS-FM) and the National Environmental Standards for Freshwater (NES-F); the New Zealand Coastal Policy Statement (NZCPS); the necessary infrastructure to support the housing growth requirements set out in the NPSUD; sustainable indigenous forest harvest provisions of the Forestry Act 1949, and the National Environmental Standards for Plantation Forestry (NESPF); the National Policy Statement on Highly Productive Land (NPS-HPL); and the National Policy Statement on Renewable Energy Generation (NPS-REG) amongst others.
- 55 Officials have sought to align the intent and wording with these instruments. This includes:
- 55.1 restricting the application of the management provisions to terrestrial areas and aligning wetland management, definitions, mineral extraction provisions and the effects management hierarchy, including offsetting and compensation components to work with the NPS-FM and NES-F;

- 55.2 providing greater alignment between definitions and management mechanisms (such as 'specified infrastructure') with the NPS-FM, NPS-HPL and NPSUD;
- 55.3 aligning forestry definitions and provisions with the NESPF and the indigenous forests provisions (Part IIIA of the Forests Act 1949); and
- 55.4 providing a consent pathway for renewable energy generation.

Councils have a central role in how we protect and restore biodiversity

- 56 Councils have the primary responsibility for implementing the NPSIB. This includes by identifying and managing the adverse effects of use and development on significant indigenous biodiversity consistently, particularly on private land.
- 57 I consider that councils also have a vital role to play in working with landowners to promote and support the protection and enhancement of indigenous biodiversity.
- 58 A streamlined approach to identifying SNAs on land managed by the Department of Conservation (DOC) has been provided. The approach reduces the assessment costs to councils of full identification, but maintains national consistency regarding the presence, management and restoration of SNAs.

The NPSIB provides more certainty to landowners

- 59 Landowners have a vital role to play in ensuring indigenous biodiversity thrives. The NPSIB helps landowners by:
 - 59.1 setting out a robust, national process for SNA identification that includes councils partnering with landowners early, the transparent sharing of information and a resolution pathway for disputes over value and extent;
 - 59.2 creating a clear and consistent national approach to indigenous biodiversity protection that reduces uncertainty and supports landowner efforts to protect indigenous biodiversity;
 - 59.3 providing for established uses to continue;
 - 59.4 providing and consent pathway for a construction of a dwelling on an existing allotment;
 - 59.5 establishing a more flexible framework for the use and development of Māori lands; and
 - 59.6 giving scope to councils to provide an 'opt in' exemption for landholders, with appropriate biodiversity covenants/kawenata, to be able to undertake activities provided for in those agreements and approved management plans.
- 60 The NPSIB does not impose obligations on landowners to proactively manage or restore indigenous biodiversity, undertake weed or pest control or fence SNAs. This is a common misconception.
- 61 Instead, requirements are for councils to protect SNAs from the adverse effects of new subdivision, use and development and to develop objectives, policies, and methods to promote the restoration of indigenous biodiversity and indigenous vegetation cover.

The NPSIB provides a flexible approach for Māori lands

- 62 Analysis shows that 44 percent of Māori customary and freehold land and 36 percent of Treaty Settlement Land has indigenous vegetation cover, compared with only 7.5 percent of all general land parcels.
- 63 Indigenous biodiversity and SNAs are disproportionality located on Māori lands. There is, therefore, the potential for the NPSIB provisions for SNAs and indigenous biodiversity to unduly affect the use and development of Māori lands.
- 64 The NPSIB acknowledges historical disadvantages and the prevalence of indigenous biodiversity on the land through a targeted management approach. This requires councils to work in partnership with tangata whenua and owners of Māori lands to enable development alongside the protection of indigenous biodiversity.

Implementation

Implementation timeframes

- 65 Implementation will be phased over ten years, although provisions that manage effects on existing SNAs and other indigenous biodiversity will be in effect from commencement. The requirements for councils to identify SNAs in plans, and to develop regional biodiversity strategies, have specific timings of five and ten years, respectively. These timeframes were tested with councils through public consultation and exposure draft processes and are considered achievable, but some councils will need additional support to meet them.
- 66 As part of the Government's resource management reform, the Natural and Built Environment Bill has recently entered parliament and been referred to Select Committee. When the NBE Act is enacted and there is certainty on the timeline for transition into the new system, the NPSIB implementation timeframes will need to be reviewed to ensure that they align with the new NBE planning processes and Spatial Planning Act timeframes.

Providing support for councils, tangata whenua, landowners and communities

- 67 Strong partnerships with landowners, including owners of Māori lands, and meaningful support and incentives to help them manage indigenous vegetation and habitats on their properties will be critical to go beyond maintaining biodiversity, and to achieve restoration and enhancement.
- 68 The NPSIB will be accompanied by a range of specific implementation support measures. This was strongly emphasised by the Biodiversity Collaborative Group in its 2018 report to Government⁴, by submitters during public consultation and identified in the 2018 Regulatory Impact Statement.
- 69 Implementation support measures will include:
- 69.1 guidance material;
- 69.2 s 9(2)(f)(iv)

⁴ See: [Final Report of the Biodiversity Collaborative Group Oct 2018](#)

- 69.3 biodiversity pilot projects that focus on improving information availability; improving coordination of biodiversity effort; and enabling innovative approaches to biodiversity management / restoration;
- 69.4 s 9(2)(f)(iv)
- 69.5 s 9(2)(f)(iv)
- 69.6 ongoing work to explore new approaches to support landowners, such as work to identify additional biodiversity incentives and explore market-based incentives with potential links to carbon markets; and
- 69.7 alignment with existing work programmes and institutional frameworks.⁵
- 70 As previously directed by Cabinet (DEV-22-MIN-0101 refers), a separate iwi/Māori implementation plan is being developed in partnership with iwi and hapū. It is expected to be delivered mid-2023, following an engagement and development process.
- 71 The iwi/Māori implementation plan will need to be approved by the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Māori Development, the Associate Minister for Māori Development, and the Associate Minister for the Environment (Biodiversity) before it is put into effect.
- 72 Funding has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package. The biodiversity incentives work programme, funded initially by the Prime Minister's Emerging Priorities Fund, also supports the delivery of the package and is being used to establish pilot projects (GOV-21-MIN-0052 refers).

Financial Implications

- 73 There are some financial implications to Government in identifying SNAs on land held and administered by DOC. These costs are expected to be modest. An approach has been developed that reduces costs of full identification, but still maintains the benefit of national consistency regarding the presence, management and restoration of SNAs.
- 74 Funding has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package. The initiative provides \$19.46 million towards supporting the implementation of the proposed NPSIB. \$17.42 million of this is contingent on gazettal of the NPSIB, and the other \$2.04 million is available for the development of biodiversity incentives.
- 75 The biodiversity incentives work programme, funded initially by the Prime Minister's Emerging Priorities Fund, also supports the delivery of the package and is being used to establish pilot projects. \$695,000 was committed to investigate ways to incentivise additional action from landowners and communities to protect, restore and enhance biodiversity.

⁵ For example, existing programmes include voluntary tools such as QEII covenanting and the Ngā Whenua Rāhui Kawenata. Existing institutional frameworks could include, for example, carbon sequestration schemes, integrated farm planning and existing national direction tools under the RMA.

Legislative Implications

Consideration of the principles of te Tiriti o Waitangi / the Treaty of Waitangi

- 76 Officials carried out an assessment of the impacts on Māori and on the consistency of the NPSIB with Te Tiriti o Waitangi (see Appendix 3). The assessment was carried out in accordance with the guidance set out in Cabinet Circular CO (19) 5.
- 77 Section 8 of the RMA requires the principles of te Tiriti o Waitangi to be taken into account and section 7(a) requires regard to be had to kaitiakitanga when developing the NPSIB. Section 6(e) of the RMA also requires anyone exercising authority under the RMA to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites and other taonga.
- 78 The NPSIB recognises the role of tangata whenua in managing indigenous biodiversity, including as kaitiaki, and recognises iwi/Māori rights and interests, including those articulated in Treaty settlements. It does this by:
- 78.1 requiring councils to work in partnership with tangata whenua when developing provisions in their plans and policy statements for indigenous biodiversity;
 - 78.2 including provisions to involve tangata whenua in the management and decision-making for indigenous biodiversity;
 - 78.3 enabling the application of te ao Māori and the recognition of mātauranga Māori;
 - 78.4 providing a pathway for tangata whenua to acknowledge, identify and protect taonga species; and
 - 78.5 providing more enabling provisions for use and development on Māori lands.
- 79 In response to feedback received through consultation and engagement, changes have been made to the NPSIB provisions to appropriately enable development and use of Māori lands.
- 80 The Crown must have particular regard to certain post-settlement legal frameworks when exercising a function, power or duty under the RMA, of which the following are applicable to the proposed NPSIB:
- 80.1 The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Te Ture Whaimana o Te Awa o Waikato / the Vision and Strategy for the Waikato River;
 - 80.2 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 and Te Awa Tupua status and the four Tupua te Kawa intrinsic values for the Whanganui River; and
 - 80.3 Ngāti Rangi Claims Settlement Act 2019 and Te Mana Tupua and the four Ngā Toka Tupua intrinsic values of Te Waiū-o-Te-Ika / Whangaehu River.
- 81 Analysis has concluded that the proposed NPSIB will not impede the implementation of these or any other existing settlements.
- 82 A summary of expected impacts on tangata whenua is included in Appendix 3.

Timing and 28-day rule

- 83 No waiver of the 28-day rule is sought. Once approved by the Executive Council, the National Policy Statement for Indigenous Biodiversity will be gazetted and come into effect 28 days later.

Compliance

- 84 The NPSIB complies with:
- 84.1 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 84.2 the principles and guidelines set out in the Privacy Act 2020;
 - 84.3 relevant international standards and obligations; and
 - 84.4 the Legislation Guidelines (2018 edition).

Regulations Review Committee

- 85 I consider there are no grounds for the Regulations Review Committee to draw this instrument to the attention of the House of Representatives under Standing Order 327.

s 9(2)(h)

86

s 9(2)(h)

87

s 9(2)(h)

88

s 9(2)(h)

Impact Analysis

Regulatory Impact Statement

- 89 A Regulatory Impact Statement (RIS) is attached in Appendix 5.
- 90 The Regulatory Impact Assessment team at the Treasury has delegated quality assurance responsibility to MfE, and the Regulatory Impact Analysis panel have determined that the RIS template in Appendix 5 is appropriate for this proposal.

⁶ The Executive Council role in the regulations process | Department of the Prime Minister and Cabinet (DPMC)

- 91 The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Summary (RIS) "Maintaining indigenous biodiversity under the Resource Management Act 1991". The panel considers the document meets the quality assurance criteria for regulatory impact analysis.
- 92 The paper clearly sets out the options available and provides a strong analysis of the reasons for the promulgation of a National Policy Statement for Indigenous Biodiversity.

RMA section 32 evaluation report

- 93 A section 32 evaluation report (s32) has been prepared for the NPSIB in accordance with the statutory requirements for national direction under the RMA and is included at Appendix 6. This includes a comprehensive Cost-Benefit Analysis (CBA).
- 94 A key finding of the s32 evaluation was that there is a high level of variability in how the NPSIB will impact each region, district and activity type due to the variability in indigenous biodiversity cover and the ways councils have already provided for SNAs. The costs of implementing the NPSIB include short-term administrative costs and potential opportunity costs for specific stakeholders, including central and local government, costs to the participants that councils will be required to engage with, and costs to private landowners. The benefits of the NPSIB will take a longer time to be realised.
- 95 The report found that there is clear and compelling evidence that preventing the further loss of indigenous biodiversity in New Zealand is critical. Better protection, maintenance and restoration of indigenous biodiversity will contribute directly to environmental, economic, social and cultural wellbeing. However, these benefits will take time to be realised.
- 96 The report concluded that the NPSIB objective is the most appropriate way to achieve the purpose of the RMA to promote sustainable management in relation to indigenous biodiversity. The provisions are assessed as being effective and efficient to achieve the NPSIB objective of maintaining New Zealand's terrestrial indigenous biodiversity while also enabling subdivision, use and development in appropriate forms and places.

Climate Implications of Policy Assessment

- 97 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.
- 98 Maintaining indigenous biodiversity and restoring SNAs will result in sequestration benefits, and increased resilience of indigenous biodiversity to climate change. However, any potential emissions impacts will be indirect and are difficult to quantify at this stage.
- 99 Cabinet will be advised of any climate implications when the work progresses in other contexts.

Population Implications

Iwi/Māori

- 100 Māori customary and freehold land and Treaty Settlement land have a greater proportion of indigenous vegetation cover than general land (private land). As such, restrictions on the subdivision, use and development of such land are likely to have disproportionate impacts on Māori. There is also a need to acknowledge the rights of Māori to exercise tino rangatiratanga over their land.
- 101 The NPSIB provides greater flexibility for development to occur on Māori lands, which includes Treaty Settlement land, compared to general land in acknowledgement of these matters.
- 102 Under the NPSIB, councils will be required to work in partnership with tangata whenua and owners of Māori lands to develop specific plan and policy provisions to maintain and protect indigenous biodiversity, and to enable development on Māori lands.
- 103 A definition of “protected Māori land” is being considered in the NBE. The definition of protected Māori land in the NBE (approved by Cabinet on 7 November 2022) excludes land that has been returned via Treaty Settlement. This is on the basis that the Crown has a responsibility to balance competing rights and interests and ensure fairness of Government policy. Ensuring that ‘general land’ is subject to the same legal framework irrespective of ownership, is considered to achieve this.
- 104 However, I consider that there is sound justification for including Treaty Settlement Land in the definition of “Māori lands” for the NPSIB on the basis that:
- 104.1 there is four times more indigenous forest cover (likely to meet the criteria for SNAs) on both Treaty Settlement Land and Māori customary and freehold land when compared with general land;
 - 104.2 there is larger proportion of both Treaty Settlement Land and Māori Land Court land (6.1% and 8.1% respectively) that have estimated SNA coverage of over 90% compared with general land (1.2%); and
 - 104.3 protection of biodiversity on Treaty Settlement Land would be disproportionately restrictive of development aspirations, compounding historical disadvantages for development.

Rural communities

- 105 Specific management approaches for certain land uses are provided for. These include the maintenance of improved pasture, plantation and indigenous forestry, Māori lands, and geothermal SNAs. Identified existing activities can also continue where their effects on an SNA are no greater in intensity, scale, or character over time than at the commencement date.
- 106 The NPSIB provides an exception for SNAs, which are also covered by an appropriate indigenous biodiversity covenant (including QEII covenants), to be managed under the terms of that covenant and any associated management plan at the request of the landowner/lessee.
- 107 Alongside the NPSIB, existing and new support measures identified in the implementation plan will help ensure more is done to support landowners and rural

communities to protect, maintain and restore biodiversity on private land. s 9(2)(g)(i)

- 108 Proposed biodiversity incentives pilots will test new ways of directly supporting landowners by providing better connections with information and expertise on the ground and exploring innovative ways to achieve positive biodiversity outcomes. Officials will continue to explore new approaches to support landowners, such as work to further investigate market-related biodiversity incentives with potential links to the carbon markets.

Agency consultation

- 109 Officials have provided the following agencies with a draft copy of this Cabinet paper for comment: Department of Conservation (DOC), Ministry for Primary Industries, Department of Internal Affairs, Land Information New Zealand, Ministry of Business, Innovation and Employment, Ministry of Housing and Urban Development, Ministry of Transport, Te Arawhiti, Te Puni Kōkiri, The Treasury, Ministry of Foreign Affairs and Trade, Te Uru Rākau – New Zealand Forest Service, New Zealand Defence Force and Waka Kotahi New Zealand Transport Agency.
- 110 The Department of the Prime Minister and Cabinet has been informed.
- 111 The NPSIB has been developed with the support of DOC officials.
- 112 Most of the agency feedback resulted in minor corrections, to provide clarity or improve workability. Some of the more significant issues raised are discussed below.

Forestry and primary sector

- 113 The Ministry for Primary Industries (MPI) was concerned about the land areas likely to be captured by the SNA criteria. They also recommended targeted engagement with primary sector experts before finalising the NPSIB criteria. s 9(2)(g)(i)

s 9(2)(g)(i)

- 114 In response, officials commissioned a review of the criteria by the ecologist who advised the Biodiversity Collaborative Group on the original criteria. Appropriate amendments have been made including to clarify the intent of the maintenance of improved pasture clause and to avoid the inadvertent capture of lower priority areas. s 9(2)(a), s 9(2)(ba)(i)

- 115 The Department of Conservation did not support the exception for harvesting indigenous trees from an SNA if the harvest is in accordance with a forest management plan or permit issues under Part 3A of the Forests Act (clause 3.11(6)), however, MPI

did support the clause. This provision has been retained as it provides for sustainable use in controlled circumstances.

Exceptions for specified infrastructure

- 116 In response to feedback, the NPSIB has been amended to provide greater scope for specified infrastructure needed for housing growth in areas identified in council plans and strategies where these are not yet identified in a plan or policy statement. The specified infrastructure definition has been amended to clarify that specified infrastructure includes infrastructure required to support housing in identified growth areas. This accords with the intent of the infrastructure exception to provide a consent pathway for nationally and regionally important infrastructure.

Exceptions for specified infrastructure - Energy

- 117 The Ministry of Business, Innovation and Employment (MBIE) has concerns that the provisions and the consenting pathway developed for specified infrastructure does not adequately provide for the national significance of renewable electricity generation (REG) and electricity transmission (ET). MBIE consider that the provisions will not sufficiently enable the deployment of renewables at the scale and pace required to meet our emissions targets and decarbonise Aotearoa's economy. On this basis, MBIE has requested a bespoke effects management hierarchy regime for REG and ET and for the alternative locations test on SNAs not to apply to REG and ET.
- 118 I believe that there is an appropriate consent pathway for specified infrastructure, including REG and ET. The pathway for REG and ET aligns with that provided for other lifeline and nationally and regional important infrastructure. Given the importance of REG to achieving the Emissions Reduction Plan it is feasible to expect that most proposals would meet the gateway tests, so I am not proposing a change to these provisions. The intricacies of the application of the gateway tests to infrastructure, such as REG, is best dealt with in guidance that could be developed in consultation with MBIE and other agencies. It will also be possible to review the effect of the gateway tests and effects management hierarchy when this document is transitioned into the NPF.
- 119 Waka Kotahi NZ Transport Agency also raised the possible cost of the effects management hierarchy more generally. As covered in the cost benefit analysis, the NPSIB will result in varying costs for different activities, however the benefits overall were found to outweigh the costs. Guidance will also assist in providing clarity around the applying the gateway tests and the effects management hierarchy, which will help to reduce costs. In the longer term, the consistency, certainty and transparency that the NPSIB will provide to decision making and the management of significant indigenous biodiversity is expected to result in cost savings as well as greater protection of indigenous biodiversity.

Exceptions – extraction

- 120 MBIE requested that the test for mineral extraction should be for both national and regional public benefit - the same as for aggregate extraction. The primary rationale for including a consent pathway for aggregate and mineral extraction activities is the locational constraint of resources. Aggregates require a consent pathway both at the national and regional level to provide local resources for the construction of housing and regionally and nationally important infrastructure (ie, state highways). Whereas,

mined minerals are generally of national significance in that they are used at a level that benefits the country nationally.

- 121 The national benefit test for mineral extraction will pick up those mined resources that are needed nationally to support existing and new industries including construction, electric vehicles, wind turbines, solar panels, batteries etc. Where the national benefit test is met, mineral extraction can occur in accordance with the effects management hierarchy.
- 122 To align with recent changes to the NPSFM and NES-F the consent pathway for coal extraction within SNAs will only be available for the operation and extension of existing coal mines (not to new coal mines). The consent pathway will only be available for coking coal beyond 31 December 2030 so from then expansion of existing thermal coal mines will not be provided an exemption.

Māori land - definition and provisions

- 123 The Ministry of Housing and Urban Development (HUD) provided feedback that some specific categories included in the definition of Māori lands are difficult to make work because they are general land, but they must be still owned by Māori. In some cases, this may not be discernible from the record of title and can only be verified by a personal inquiry. These categories were previously Māori customary or freehold land under Te Ture Whenua Māori Act 1993 and were changed for reasons beyond the control of the owners. I consider these lands should, therefore, be addressed in the same way as Māori customary and freehold land by being covered by the more permissive management approach for Māori Lands. The risk of this issue being a problem is low as the Iwi Leaders' technicians told us if land was originally Māori customary or freehold land it wouldn't be resold from Māori ownership. Any difficulties can be addressed through the iwi/Māori implementation plan.
- 124 Changes have been made since the exposure draft to respond to iwi technicians' concerns. Clauses 3.18 (2)(e) and (f)) have been amended to require councils to recognise the historical disadvantages of the land and that there are circumstances where development may prevail over indigenous biodiversity. DOC does not support this change.
- 125 I consider that given the disproportionate impacts on Māori land, including the greater proportion of Māori lands with more than 90% SNA coverage, it is the correct course of action for this to be understood and recognised by councils when developing planning provisions for Māori Lands together with tangata whenua. I do not consider it will result in significant loss of indigenous biodiversity.

Public conservation land

- 126 DOC requested changes to the to the drafting of the Public Conservation Land definition and criteria for deeming SNAs on Public Conservation Land, which have been made.

Communications and publicity

- 127 There has been ongoing interest in the development and finalisation of the NPSIB. Subject to Cabinet decisions, I plan to make an announcement in December 2022 on the gazettal of the NPSIB.

- 128 Officials will publish the Order in Council in the New Zealand Gazette, provide a copy of the NPSIB to every local authority, and provide a summary of my decisions to those who have made submissions (as required by section 52(3)(c) of the RMA).
- 129 The MfE and Treasury websites will publish the RIS within 30 working days of the final decision on the NPSIB being taken.

Proactive Release

- 130 I intend to release this Cabinet paper following Cabinet decisions proactively within 30 business days, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Associate Minister for the Environment (Biodiversity) recommends that the Cabinet Economic Development Committee:

State of biodiversity in Aotearoa New Zealand

- 1 **Note** that New Zealand is losing its most precious indigenous biodiversity with over 3247 species threatened or at risk of extinction. This includes: 94% of reptiles, 80% of bats, 75% of frogs, 74% of land birds, 69% of mosses, 46% of plants and 35% of insects. Our indigenous biodiversity is unique and important to support healthy ecosystems for the benefit and wellbeing of communities and has important cultural values;
- 2 **Note** many of our most threatened species are present within lowland and coastal areas. These areas are often in private ownership, and many of these areas currently have no or limited protection in place;

Development of the National Policy Statement for Indigenous Biodiversity

- 3 **Note** the National Policy Statement for Indigenous Biodiversity (NPSIB) was originally developed collaboratively by the stakeholder-led Biodiversity Collaborative Group, and has since been further refined by Government, including through public consultation, regional hui, and further targeted engagement;
- 4 **Note** that Cabinet agreed to the Associate Minister for the Environment developing and publicly consulting on the NPSIB in November 2019 (ENV-19-MIN-0063 refers) and Cabinet subsequently agreed to release an exposure draft NPSIB for targeted consultation in June 2022 (DEV-22-MIN-0101 refers);
- 5 **Note** that existing national direction, including the NPSIB (when gazetted), will be transitioned into the first iteration of the National Planning Framework (NPF) that will be made under the proposed Natural and Built Environment Act, which will be the primary replacement of the Resource Management Act 1991 (RMA) in the Government's resource management reform;
- 6 **Note** that there has been extensive consultation with the public, councils, Māori groups, primary sector and non-government organisations to develop, test and refine the NPSIB; and that overall, there has been a large degree of support for the intent of the NPSIB;

Regulatory context

- 7 **Note** that under the RMA, councils must protect areas of significant indigenous vegetation and significant habitat of indigenous fauna as a matter of national importance and maintain indigenous biodiversity more generally;
- 8 **Note** that a national policy statement is needed to give consistency to councils' interpretation of and to strengthen and underpin the application of the RMA, to support councils to implement existing requirements, and improve indigenous biodiversity outcomes;
- 9 **Note** that the NPSIB will be a national direction under RMA;
- 10 **Note** the NPSIB will provide direction to councils on the plan provisions required to give effect to the Aotearoa New Zealand Biodiversity Strategy and Te Pae Tawhiti, Part 2 of the RMA and their functions under sections 30 and 31 of the RMA;

Intent of NPSIB

- 11 **Note** that the NPSIB seeks to protect, maintain and restore indigenous biodiversity, requiring at least no reduction nationally;

Content of the NPSIB

- 12 **Note** that to ensure indigenous biodiversity is protected, maintained and restored, regional councils and territorial authorities will be required to:
- 12.1 identify and map areas of significant biodiversity (SNAs) within their district or region;
 - 12.2 make or change their policy statements and plans to avoid or manage the adverse effects of subdivision use and development on indigenous biodiversity and avoid or manage development, use or activities that result in the loss of indigenous biodiversity;
 - 12.3 through their plans or policy statements, promote the restoration of indigenous biodiversity;
 - 12.4 develop regional biodiversity strategies and monitor indigenous biodiversity; and
 - 12.5 actively involve tangata whenua by working in partnership with tangata whenua and Māori landowners to develop objectives policies and rules for the management of indigenous biodiversity of Māori lands and to identify and protect taonga species;

Providing for social, economic and cultural wellbeing

- 13 **Note** the NPSIB provides for specific management regimes for SNAs within plantation forestry, improved pasture, on Māori lands and in geothermal areas;
- 14 **Note** the NPSIB recognises that there are some activities that may need to occur in SNAs, and the NPSIB provides a consenting pathway for these, including:
- 14.1 infrastructure for lifeline utilities (including renewable electricity generation);

- 14.2 infrastructure in urban growth areas to support housing objectives under the National Policy Statement on Urban Development; and
- 14.3 certain extraction activities (although coal extraction is limited to expansion of existing mines);

Alignment with other national direction and statutes

- 15 **Note** that the NPSIB has been amended to have greater alignment with other statutes and national direction including the National Policy Statement for Freshwater Management and the National Environmental Standards for Freshwater; the New Zealand Coastal Policy Statement; the National Policy Statement Urban Development; the Forests Act, and the National Environmental Standards for Plantation Forestry; and the National Policy Statement on Highly Productive Land;

Council role in protecting indigenous biodiversity

- 16 **Note** that councils have primary responsibility for identifying and managing the adverse effects of use and development on significant indigenous biodiversity and the NPSIB provides a consistent approach to undertaking this;
- 17 **Note** the NPSIB provides a streamlined approach for councils to identify SNAs on land held and administered by the Department of Conservation;

Providing more certainty to landowners

- 18 **Note** the NPSIB supports landowners by creating a clear consistent approach to indigenous vegetation identification and protection;
- 19 **Note** the NPSIB provides scope for Council to identify established activities that can continue within SNAs;
- 20 **Note** that the NPSIB provides scope for landholders with appropriate biodiversity covenants/kawenata to be able to undertake activities agreed in those agreements and approved management plans;

The NPSIB provides a flexible approach for Māori lands

- 21 **Note** the NPSIB provides for mātauranga Māori and supports the government in taking into account te Tiriti o Waitangi in relation to indigenous biodiversity management;
- 22 **Note** the NPSIB requires councils to work in partnership with tangata whenua and owners of Māori lands to develop a more flexible framework for use and development of Māori lands;

Implementation

- 23 **Note** in its 2018 report, the Biodiversity Collaborative Group conveyed the importance of strong partnerships with landowners and meaningful support and incentives to help them manage indigenous vegetation and habitats on their properties;
- 24 **Note** that the implementation plan for the NPSIB is attached as Appendix 2, and provides more specificity on implementation timeframes, roles and responsibilities, support measures;

- 25 **Note** that funding has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to support implementation;
- 26 **Note** that once the NBE Act is enacted the NPSIB implementation timeframes will be reviewed to ensure that they align with the new NBE planning processes and Spatial Planning Act timeframes;

Piloting projects to support biodiversity management

- 27 **Note** that new approaches to supporting landowners are part of the implementation package;
- 28 **Note** that funding provided through the Prime Minister's Emerging Priorities Fund (CBC-21-MIN-0210 refers) is being used to pilot approaches that focus on improving information availability; improving coordination of biodiversity effort; and enabling innovative approaches to biodiversity management;
- 29 **Note** that officials are exploring new approaches to support landowners, such as market-based incentives and that this work connects with wider activity to improve the voluntary carbon market;

Supporting documentation for the NPSIB

- 30 **Note** Treaty of Waitangi Analysis Report is attached as Appendix 3;
- 31 **Note** the Regulatory Impact Statement is attached as Appendix 5;
- 32 **Note** the section 32 report and cost-benefit analysis is attached as Appendix 6;
- 33 **Note** that the NPSIB is consistent with the recommendations report, which has been prepared in accordance with s46A(4)(c) of the RMA;
- 34 **Note** that the Associate Minister for the Environment (Biodiversity) has made no changes to officials' recommendations under s52(1)(b)(i) of the RMA and the recommendations report is therefore accepted;
- 35 **Note** that the Associate Minister for the Environment (Biodiversity) considers the making of the NPSIB appropriate under section 52 of the RMA;

Process for preparing and finalising the NPSIB

- 36 **Authorise** the Associate Minister for the Environment (Biodiversity) to make minor drafting amendments to the NPSIB and supporting documents as required prior to gazettal, to ensure it gives effect to its policy intent and for alignment with other national direction as appropriate;

Bringing the NPSIB into force

- 37 **Invite** the Associate Minister for the Environment (Biodiversity) to submit the final NPSIB to the Governor-General in Council for approval;
- 38 **Agree** that the Order in Council promulgating the NPSIB will be notified in the New Zealand Gazette, subject to approval from the Governor-General in Council; and
- 39 **Note** that the NPSIB will come into effect 28 days after gazettal.

Authorised for lodgement

Hon James Shaw

Associate Minister for the Environment (Biodiversity)

Appendix 1: National Policy Statement for Indigenous Biodiversity

Appendix 2: Implementation Plan

Appendix 3: Treaty of Waitangi Analysis Report

s 9(2)(h)

Appendix 5: Regulatory Impact Statement

Appendix 6: Section 32 Report

Cabinet Minute

CAB-22-MIN-0600: Minute of Decision National Policy Statement for Indigenous Biodiversity



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

National Policy Statement for Indigenous Biodiversity

Portfolio Environment

On 19 December 2022, Cabinet:

State of biodiversity in Aotearoa New Zealand

1 **noted** that:

- 1.1 New Zealand is losing its most precious indigenous biodiversity, with over 3,247 species threatened or at risk of extinction, including 94 percent of reptiles, 80 percent of bats, 75 percent of frogs, 74 percent of land birds, 69 percent of mosses, 46 percent of plants and 35 percent of insects;
- 1.2 New Zealand's indigenous biodiversity is unique and important to support healthy ecosystems for the benefit and wellbeing of communities, and has important cultural values;

2 **noted** that:

- 2.1 many of the most threatened species are present within lowland and coastal areas;
- 2.2 these areas are often in private ownership, and many of these areas currently have no or limited protection in place;

Development of the National Policy Statement for Indigenous Biodiversity

3 **noted** that the National Policy Statement for Indigenous Biodiversity (NPSIB) was originally developed collaboratively by the stakeholder-led Biodiversity Collaborative Group, and has since been further refined by government, including through public consultation, regional hui, and further targeted engagement;

4 **noted** that:

- 4.1 on 19 November 2019, the Cabinet Environment, Energy and Climate Committee agreed to undertake public consultation on the proposed NPSIB between November 2019 and March 2020 [ENV-19-MIN-0063];
- 4.2 on 4 May 2022, the Cabinet Economic Development Committee agreed to release an exposure draft NPSIB for targeted consultation [DEV-22-MIN-0101];

- 5 **noted** that existing national direction, including the NPSIB (when gazetted), will be transitioned into the first iteration of the National Planning Framework (NPF) that will be made under the proposed Natural and Built Environment Act, which will be the primary replacement of the Resource Management Act 1991 (RMA) in the government's resource management reform;
- 6 **noted** that:
- 6.1 there has been extensive consultation with the public, councils, Māori groups, primary sector and non-government organisations to develop, test and refine the NPSIB;
- 6.2 overall, there has been a large degree of support for the intent of the NPSIB;

Regulatory context

- 7 **noted** that under the RMA, councils must protect areas of significant indigenous vegetation and significant habitat of indigenous fauna as a matter of national importance, and maintain indigenous biodiversity more generally;
- 8 **noted** that a national policy statement is needed to give consistency to councils' interpretation of, and strengthen and underpin the application of, the RMA, to support councils to implement existing requirements, and improve indigenous biodiversity outcomes;
- 9 **noted** that the NPSIB will be a national direction under the RMA;
- 10 **noted** that the NPSIB will provide direction to councils on the plan provisions required to give effect to the Aotearoa New Zealand Biodiversity Strategy and Te Pae Tawhiti, Part 2 of the RMA and their functions under sections 30 and 31 of the RMA;

Intent of NPSIB

- 11 **noted** that the NPSIB seeks to protect, maintain and restore indigenous biodiversity, requiring at least no reduction nationally;

Content of the NPSIB

- 12 **noted** that to ensure indigenous biodiversity is protected, maintained and restored, regional councils and territorial authorities will be required to:
- 12.1 identify and map areas of significant biodiversity (SNAs) within their district or region;
- 12.2 make or change their policy statements and plans to avoid or manage the adverse effects of subdivision use and development on indigenous biodiversity, and to avoid or manage development, use or activities that result in the loss of indigenous biodiversity;
- 12.3 through their plans or policy statements, promote the restoration of indigenous biodiversity;
- 12.4 develop regional biodiversity strategies and monitor indigenous biodiversity;
- 12.5 actively involve tangata whenua by working in partnership with tangata whenua and Māori landowners to develop objectives, policies and rules for the management of indigenous biodiversity of Māori lands and to identify and protect taonga species;

Providing for social, economic and cultural wellbeing

- 13 **noted** that the NPSIB provides for specific management regimes for SNAs within plantation forestry, the maintenance of improved pasture, and activities on Māori lands and in geothermal areas;
- 14 **noted** that the NPSIB recognises that there are some activities that may need to occur in SNAs, and that the NPSIB provides a consenting pathway for these, including:
- 14.1 infrastructure for lifeline utilities (including renewable electricity generation);
 - 14.2 infrastructure in urban growth areas to support housing objectives under the National Policy Statement on Urban Development;
 - 14.3 certain extraction activities (although coal extraction is limited to expansion of existing mines);

Alignment with other national direction and statutes

- 15 **noted** that the NPSIB has been amended to have greater alignment with other statutes and national directions, including:
- 15.1 the National Policy Statement for Freshwater Management and the National Environmental Standards for Freshwater;
 - 15.2 the New Zealand Coastal Policy Statement;
 - 15.3 the National Policy Statement Urban Development;
 - 15.4 the Forests Act 1949, and the National Environmental Standards for Plantation Forestry;
 - 15.5 the National Policy Statement on Highly Productive Land;

Council role in protecting indigenous biodiversity

- 16 **noted** that councils have primary responsibility for identifying and managing the adverse effects of use and development on significant indigenous biodiversity, and that the NPSIB provides a consistent approach to undertaking this;
- 17 **noted** that the NPSIB provides a streamlined approach for councils to identify SNAs on land held and administered by the Department of Conservation;

Providing more certainty to landowners

- 18 **noted** that the NPSIB supports landowners by creating a clear, consistent approach to indigenous vegetation identification and protection;
- 19 **noted** that the NPSIB provides scope for councils to identify established activities that can continue within SNAs;
- 20 **noted** that the NPSIB provides scope for landholders with appropriate biodiversity covenants/kawenata to be able to undertake activities agreed in those agreements and approved management plans;

The NPSIB provides a flexible approach for Māori lands

- 21 **noted** that the NPSIB provides for mātauranga Māori, and supports the government in taking into account te Tiriti o Waitangi in relation to indigenous biodiversity management;
- 22 **noted** that the NPSIB requires councils to work in partnership with tangata whenua and owners of Māori lands to develop a more flexible framework for the use and development of Māori lands;

Implementation

- 23 **noted** that in its 2018 report, the Biodiversity Collaborative Group conveyed the importance of strong partnerships with landowners and meaningful support and incentives to help them manage indigenous vegetation and habitats on their properties;
- 24 **noted** that the implementation plan for the NPSIB, attached as Appendix 2 to the paper under CAB-22-SUB-0600, provides more specificity on implementation timeframes, roles and responsibilities, and support measures;
- 25 **noted** that funding has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to support implementation;
- 26 **noted** that once the Natural and Built Environment Bill is enacted, the NPSIB implementation timeframes will be reviewed to ensure that they align with the new planning processes and Spatial Planning Act timeframes;

Piloting projects to support biodiversity management

- 27 **noted** that new approaches to supporting landowners are part of the implementation package;
- 28 **noted** that funding provided through the Prime Minister's Emerging Priorities Fund is being used to pilot approaches that focus on improving information availability, improving coordination of biodiversity effort, and enabling innovative approaches to biodiversity management;
- 29 **noted** that officials are exploring new approaches to support landowners, such as market-based incentives, and that this work connects with wider activity to improve the voluntary carbon market;

Supporting documentation for the NPSIB

- 30 **noted** the Treaty of Waitangi Analysis Report, attached as Appendix 3 to the paper under CAB-22-SUB-0600;
- 31 **noted** the Regulatory Impact Statement, attached as Appendix 5 to the paper under CAB-22-SUB-0600;
- 32 **noted** the section 32 report and cost-benefit analysis, attached as Appendix 6 to the paper under CAB-22-SUB-0600;
- 33 **noted** that the NPSIB is consistent with the recommendations report, which has been prepared in accordance with section 46A(4)(c) of the RMA;
- 34 **noted** that the Associate Minister for the Environment (Biodiversity) has made no changes to officials' recommendations under section 52(1)(b)(i) of the RMA, and that the recommendations report is therefore accepted;

35 **noted** that the Associate Minister for the Environment (Biodiversity) considers the making of the NPSIB to be appropriate, under section 52 of the RMA;

Process for preparing and finalising the NPSIB

36 **agreed, in principle**, to the NPSIB being gazetted **subject to** recommendations 39-41;

37 **authorised** the Associate Minister for the Environment (Biodiversity) to make minor drafting amendments to the NPSIB and supporting documents as required prior to gazettal, to ensure it gives effect to its policy intent;

38 **noted** that the proposed definition of Māori lands is not the same as that set out in the Natural and Built Environment Bill;

39 **invited** the Minister for the Environment, Associate Minister for the Environment (Māori rights and interests), and the Associate Minister for the Environment (Biodiversity) to provide further advice to Cabinet on the definition of Māori lands in the NPSIB;

40 **noted** that the Associate Minister for the Environment (Biodiversity) will invite the Associate Minister for the Environment (Hon Kiri Allan) to assist in finalising the iwi/Māori implementation plan for the NPSIB;

41 **invited** the Minister of Energy and Resources, the Minister for the Environment, and the Associate Minister for the Environment (Biodiversity) to provide further advice to Cabinet on the appropriate consent pathway for renewable electricity generation;

42 **invited** the Associate Minister for the Environment (Biodiversity) to bring the finalised NPSIB to Cabinet for decision in February 2023;

Bringing the NPSIB into force

43 **noted** that in the interim, officials will begin preparing the NPSIB content for the first National Planning Framework on the basis of the in-principle Cabinet decision in paragraph 36;

44 **invited** the Associate Minister for the Environment (Biodiversity) to recommend the final NPSIB to the Governor-General in Council for approval once paragraphs 39-41 are undertaken;

45 **agreed** that the Order in Council promulgating the NPSIB will be notified in the New Zealand Gazette, subject to approval from the Governor-General in Council;

46 **noted** that the NPSIB will come into effect 28 days after gazettal.

Rachel Hayward
Secretary of the Cabinet

Cabinet paper

CAB-23-SUB-0202: Approval of National Policy Statement for Indigenous Biodiversity

In Confidence

Office of the Associate Minister for the Environment (Biodiversity)

Chair, Cabinet Committee

Approval of National Policy Statement for Indigenous Biodiversity

Proposal

- 1 This paper seeks Cabinet approval of the National Policy Statement for Indigenous Biodiversity (NPSIB). It reports back on three matters that Cabinet requested I address [CAB-22-MIN-0600 refers].
- 2 This paper also:
 - seeks agreement to announce the Government's interest in establishing a biodiversity credit system¹ for Aotearoa New Zealand, which would complement implementation of the NPSIB; and
 - highlights connections between climate-related land-use and sequestration policies, as requested by the Climate Response Ministerial Group.

Relation to government priorities

- 3 The NPSIB and biodiversity credit system:
 - delivers on the area of cooperation outlined in the Cooperation Agreement between the Labour Party and the Green Party, "Protecting our environment and biodiversity through working to achieve the outcomes of Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020";
 - supports Labour's 2020 Election Manifesto priority "Our Natural Environment", to protect, preserve and restore our natural heritage and biodiversity, and promote the recovery of threatened species;
 - contributes to Te Pae Tawhiti: the whole-of-government approach connected to the Wai 262 claim and the subsequent Waitangi Tribunal report Ko Aotearoa Tēnei; and
 - will support a key system outcome of the Government's resource management reforms: the protection and restoration of the ecological integrity, mana and mauri of indigenous biodiversity (Natural and Built Environment (NBE) Bill, clause 5).

¹ A biodiversity credit is an economic instrument that recognises (in a standardised way) projects or activities on public or private land, including whenua Māori, that provide positive outcomes for biodiversity, against which nature positive claims can be made. A biodiversity credit system is the institutional settings that enable and govern the creation, sale and purchase of, and claims made against, biodiversity credits.

Background

- 4 The proposed NPSIB provides a necessary regulatory response to address the decline in Aotearoa New Zealand's indigenous biodiversity. It seeks to protect and maintain indigenous biodiversity requiring at least no further reduction nationally.
- 5 Under the Resource Management Act, councils have a requirement to protect areas of significant indigenous vegetation and significant habitat of indigenous fauna. However, a lack of national direction has led to inconsistent approaches and poor processes for landowners and Māori. In addition, costly and extensive litigation for councils has led to inadequate regulatory protection contributing to ongoing biodiversity loss.
- 6 The NPSIB will build on the work that landholders and councils have been undertaking to protect indigenous biodiversity by providing greater clarity on appropriate approaches and processes for protecting indigenous biodiversity.
- 7 The NPSIB is a key tool for Aotearoa New Zealand to meet its commitments under the Kunming-Montreal Global Biodiversity Framework, which sets out 23 targets to be achieved by 2030 for stemming the global biodiversity crisis.
- 8 The national-level network of significant natural areas is especially important for our progress on target 3, (ecologically representative protected areas), target 10 (sustainable primary industries) and target 12 (biodiversity-inclusive urban planning). The NPSIB sets us up well for meeting the targets set out in the framework.
- 9 On 19 December 2022 Cabinet agreed, in principle, to the NPSIB, subject to addressing three matters [CAB-22-MIN-0600 refers]:
 - the Minister for the Environment, Associate Minister for the Environment (Māori rights and interests), and the Associate Minister for the Environment (Biodiversity) providing further advice to Cabinet on the definition of Māori lands in the NPSIB;
 - the Associate Minister for the Environment (Biodiversity) inviting the Associate Minister for the Environment (Māori rights and interests), to assist in finalising the iwi/Māori implementation plan for the NPSIB; and
 - the Minister of Energy and Resources, the Minister for the Environment, and the Associate Minister for the Environment (Biodiversity) providing further advice to Cabinet on the appropriate consent pathway for renewable electricity generation.
- 10 This paper provides a report back on these three matters and seeks Cabinet's agreement to the NPSIB and provision to the Governor General for approval for gazettal.

- 11 The paper also seeks agreement to announce the Government's interest in establishing a biodiversity credit system for Aotearoa New Zealand, which would complement the implementation of the NPSIB.

Analysis

- 12 I have worked with the Minister for the Environment, Associate Minister for the Environment (Māori rights and interests) and the Minister of Energy and Resources to address the issues set out in paragraph 8 above, and I consider that these issues are sufficiently addressed to enable approval of the NPSIB.
- 13 There has been engagement with iwi, hapu and Māori landowners throughout the development of the NPSIB, which is outlined below.

Report back on the definition of Māori Lands

- 14 To ensure consistency with the the Natural and Built Environment Bill, and recognise the need for the inclusion of Treaty settlement land, I propose that the NPSIB include:
- A core definition of specified Māori land based on the definition of protected Māori land in the Natural and Built Environment Bill (which does not refer to Treaty settlement land); but
 - Include Treaty settlement land for specific provisions, including clause 3.18 of the NPSIB, which provides a more flexible management approach for indigenous biodiversity and use and development on those lands.
- 15 It remains important to include Treaty settlement land as it is likely to have extensive indigenous biodiversity coverage, but in a qualified way.
- 16 This approach ensures consistency with the Natural and Built Environment Bill and recognises the Crown's obligations under the Treaty of Waitangi/ Te Tiriti o Waitangi. This approach also responds to issues raised during engagement with iwi/Māori and in submissions, by recognising the potential for the NPSIB to have a disproportionately greater impact on Māori land and Treaty settlement land due to the high percentage of indigenous biodiversity cover on Māori land, including Treaty settlement land.
- 17 Significant Natural Areas will still be identified on Māori land and Treaty settlement land but the usual provisions for Significant Natural Areas will not apply. Instead, councils will need to work in partnership with tangata whenua and owners of specified Māori land and Treaty settlement land to develop appropriate management provisions.
- 18 The proposed definition of specified Māori land now includes:
- a. Māori customary and freehold land under Te Ture Whenua Māori Act 1993;
 - b. Māori reservations under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953;

- c. land held by or on behalf of an iwi or a hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of mana whenua over the land;
- d. Māori reserves under the Māori Reserved Land Act 1955;
- e. land that forms part of a natural feature and is a legal entity such as Te Urewera; and
- f. the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

Development of an iwi/Māori implementation plan for the NPSIB

- 19 The NPSIB will be accompanied by a range of specific implementation support measures. Implementation support will be critical to the success of the NPSIB.
- 20 As directed by Cabinet [CAB-22-MIN-0600 refers] I have invited the Associate Minister for the Environment (Māori rights and interests) to assist with developing an iwi/Māori implementation plan.

21 s 9(2)(f)(iv)

22 s 9(2)(f)(iv)

Consent pathway for renewable electricity generation

- 23 In the version of the NPSIB that Cabinet previously considered, the Ministry of Business, Innovation and Employment (MBIE) raised concerns that:
- the provisions and the consenting pathway developed for specified infrastructure did not adequately provide for the national significance of renewable electricity generation and electricity transmission network assets; and
 - the provisions would not sufficiently enable the deployment of renewable electricity generation and electricity transmission network infrastructure at the scale and pace required to meet our emissions targets and decarbonise Aotearoa's economy.
- 24 I have clarified the approach in the NPSIB for the development of renewable electricity generation and electricity transmission network.
- 25 The NPSIB provides for the development of renewable electricity generation and electricity transmission network assets in significant natural areas through a more permissive consent pathway using an 'effects management hierarchy'.
- 26 New development of specified infrastructure (including for renewable electricity generation and electricity transmission network assets) is not

required to strictly avoid adverse effects on indigenous biodiversity, instead their adverse effects must be managed by applying the 'effects management hierarchy'.

- 27 The Minister of Energy and Resources, and the Minister for the Environment and I have also engaged in discussion on how the consenting pathway gateway tests should be applied to the development of renewable electricity generation and electricity transmission network infrastructure and assets.
- 28 I have amended the NPSIB to:
- including definitions of electricity transmission network, electricity transmission network assets and renewable electricity generation assets;
 - clarifying that proposals for renewable electricity generation assets and electricity transmission network assets are considered to be of significant national or regional public benefit (this includes community schemes and those that connect to distribution networks); and
 - constraining the 'no practicable alternative locations' gateway test for renewable electricity generation and electricity transmission network asset development. This constraint will extend to consideration of sites within the region that avoid, or have less effect on, a significant natural area or indigenous biodiversity. This will reduce the number of alternative sites that applicants have to consider, reducing the complexity of applications and costs.
- 29 This will highlight to councils the importance of renewable electricity generation and electricity transmission network projects in their decision-making. It will also make the gateway test more straightforward for renewable electricity generation and electricity transmission network development.
- 30 These changes are within the parameters of the options put forward in the discussion document on '*Strengthening national direction on renewable electricity generation and electricity transmission*' released in April 2023.

Engagement with tangata whenua on the NPSIB

- 31 Engagement with tangata whenua has consistently shown a concern that significant natural area protection would limit development opportunities and have a disproportionate impact on Māori lands because of historical disadvantages and the extent of indigenous biodiversity on their lands.
- 32 The first draft of the NPSIB was developed by the Biodiversity Collaborative Group, which included a representative of the National Iwi Chairs Forum, through the Pou Taiao Iwi Leaders Group. The Biodiversity Collaborative Group draft NPSIB was informed by a report prepared by Te Kahu o te Taiao, the Mātauranga Māori rōpū of the National Iwi Chairs Forum.
- 33 The joint MfE and DOC project team refined the Biodiversity Collaborative Group draft NPSIB from October 2018 until public consultation from

November 2019 to March 2020. This included engagement with tangata whenua, councils and key stakeholders.

- 34 There were three rounds of nationwide hui during the development of the NPSIB:
- the Biodiversity Collaborative Group undertook a round of hui when developing their draft NPSIB. In early 2019 DOC ran a series nationwide regional hui across the country, meeting with hapū, iwi, Māori Trusts and Māori landowners. These hui covered five biodiversity topics, including the NPSIB;
 - MfE held a second round of 13 regional hui in early 2020: (Whangarei, Auckland, Hamilton, New Plymouth, Tauranga, Rotorua, Taupo, Whanganui, Napier, Gisborne, Wellington, Nelson, Dunedin) with approximately 200 attendees; and
 - In 2021, MfE also contacted all iwi with geothermal systems about the options for provisions to protect geothermal ecosystems and held hui with those who wished and were able to engage.
- 35 In October 2021, Post Settlement Governance Entities were contacted and invited to register their interest in the development of the NPSIB.
- 36 The 2020 public consultation draft of the NPSIB included a consenting pathway for development on Māori land if it had significant social, economic and cultural benefit (including papakainga and marae). Because of continued concern expressed by tangata whenua, the exposure draft included significant changes:
- a separate provision for Māori land where the usual protections for significant natural areas do not apply;
 - requiring partnership to develop a management approach for significant natural areas, taonga species and indigenous biodiversity; and
 - flexibility to enable development.
- 37 An exposure draft NPSIB was available for public submissions for a 6-week period during June and July 2022. Three online hui were held, and further specific engagement with National Iwi Chairs Forum technicians also occurred in 2022.
- 38 Since the exposure draft, further changes have been made to:
- strengthen the requirement to enable development on Māori lands; and
 - require a partnership approach across the NPSIB.
- 39 I have recently undertaken engagement with hapū in Northland because of the concern they expressed earlier about councils identifying significant natural areas and the significant impact this would have given extensive

indigenous vegetation cover on their lands. In this recent engagement they expressed the following:

- a strong interest in caring for the environment;
- interest in understanding more about the partnership approach for Māori lands;
- distrust of council processes for Significant Natural Area identification and protection;
- a positive response for biodiversity credits; and
- queries about how the NPSIB fits with the recommendations of the Waitangi Tribunal on the Wai 262 claim.

40 The NPSIB will improve council processes for identification of significant natural areas through setting clear expectations and principles for working with tangata whenua and landowners. It will also require councils to work in partnership to develop more flexible provisions enabling development on Māori land.

41 In its Wai 262 report the Tribunal emphasised the importance of the resource management system providing for the full kaitiaki relationship with the environment based on whakapapa and mātauranga Māori (as profound knowledge that is handed down within whānau, hapū and iwi), and considered that Resource Management Act 1991 processes are under-utilised in this regard.

42 The Wai 262 report informed the development of the NPSIB, strengthening the role of tangata whenua in the management of indigenous biodiversity and in decision-making and identification of taonga species by including:

- objectives and policies that recognise tangata whenua as kaitiaki;
- decision-making principles which require councils to form strong and effective partnerships and recognise the bond between tangata whenua and indigenous biodiversity based on whakapapa, and the kaitiaki responsibility of care, and enable the application of te ao Māori and mātauranga Māori;
- strengthening the role of tangata whenua decision making and requiring councils to partner with them in the implementation of the NPSIB;
- providing a pathway for tangata whenua to identify and manage taonga species in partnership with councils;
- specific provisions applicable to management of indigenous biodiversity on Māori land; and
- enabling the use of mātauranga Māori and ensuring it is informed at a local level specific to hapū and iwi.

Approval of the National Policy Statement for Indigenous Biodiversity

- 43 I consider that the issues discussed above have been sufficiently resolved, noting that development of an iwi/Māori implementation plan for the NPSIB is being progressed.
- 44 An updated NPSIB is attached to this Cabinet Paper at Appendix 1. This includes the changes outlined above, as well as some minor changes which were made to align with the National Policy Statement for Freshwater Management.
- 45 I propose that Cabinet agree to recommend the NPSIB to the Governor-General in Council for approval, and then proceed to issue the NPSIB by notice in the New Zealand Gazette in the next two months.

A Biodiversity Credit System for Aotearoa New Zealand

- 46 I propose to announce the Government's interest in establishing a biodiversity credit system for Aotearoa New Zealand, which would complement the implementation of the NPSIB. The announcement would include announcing the Government's intention to release, as a first step, a discussion document mid-year (subject to Cabinet review in June).
- 47 Engagement with Māori and landowners on the NPSIB has highlighted a high level of interest in incentives to ameliorate any costs associated with protecting significant natural areas.
- 48 A biodiversity credit system is a standardised approach to provide financial support for 'nature positive' activities and outcomes including protection, restoration, and management of biodiversity on public and private land including whenua Māori.
- 49 We want a system that recognises landowners including iwi/Māori who have and care for significant natural areas on their land, and support and protect indigenous biodiversity more generally.
- 50 Biodiversity credits are an emerging economic instrument internationally and domestically. They generally recognise projects or activities that provide positive outcomes for biodiversity, against which nature positive claims can be made. Projects and activities recognised by a credit could be on public or private land, including whenua Māori, as well as in waterways and in the ocean.
- 51 Biodiversity credits could also potentially cover taonga and highly mobile species and the reestablishment of indigenous biodiversity in the wider landscape.
- 52 This would potentially provide an attractive option for the philanthropic, corporate and community sectors to invest in biodiversity in Aotearoa.
- 53 A joint work programme has been established between the Ministry for the Environment and the Department of Conservation to progress work on a

biodiversity credit system tailored to Aotearoa New Zealand.

- 54 As part of this work, officials are looking closely at international approaches to biodiversity credit systems including both Government and the private sector approaches.

Biodiversity credits are part of a wider suite of climate-related land-use and sequestration policies

- 55 A biodiversity credit system has the potential to complement the Emissions Trading Scheme and voluntary carbon markets and other programmes by incentivising the use of indigenous tree species and ecosystem restoration.
- 56 The Government is progressing several workstreams to address the current climate change and biodiversity crises, which broadly fall into two categories:
- supporting gross emissions reductions through the New Zealand Emissions Trading Scheme and other decarbonisation policies; and
 - incentivising land-use decisions that bring positive environmental benefits.

57

s 9(2)(f)(iv), s 9(2)(g)(i)

s 9(2)(f)(iv), s 9(2)(g)(i)

58

59

60

61 Collectively, these workstreams provide a comprehensive package of actions that can complement and reinforce one another. Thus, decisions and announcements that provide clarity on future policy direction are timely, even if the policies are implemented over different time periods.

Financial Implications

- 62 As Cabinet noted previously [CAB-22-MIN-0600 refers], there are some financial implications to Government in identifying significant natural areas on land held and administered by DOC. These costs are expected to be modest.
- 63 Funding has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help fund the implementation package. The initiative provides \$19.46 million towards supporting the implementation of the proposed NPSIB. \$17.42 million of this is contingent on gazettal of the NPSIB, and the other \$2.04 million is available for the development of biodiversity incentives.
- 64 The biodiversity incentives work programme, funded initially by the Prime Minister's Emerging Priorities Fund, also supports the delivery of the package and is being used to establish pilot projects. \$695,000 was committed to investigate ways to incentivise additional action from landowners and communities to protect, restore and enhance biodiversity.

Legislative Implications

Consideration of the principles of te Tiriti o Waitangi / the Treaty of Waitangi

- 65 Officials carried out an assessment of the impacts on Māori and on the consistency of the NPSIB with Te Tiriti o Waitangi/the Treaty of Waitangi (see Appendix 3). The assessment was carried out in accordance with the guidance set out in Cabinet Circular CO (19) 5.
- 66 Section 8 of the Resource Management Act 1991 (RMA) requires the principles of the Treaty of Waitangi to be taken into account and section 7(a) requires regard to be had to kaitiakitanga when developing the NPSIB. Section 6(e) of the RMA also requires anyone exercising authority under the RMA to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites and other taonga.
- 67 The NPSIB recognises the role of tangata whenua in managing indigenous biodiversity, including as kaitiaki, and takes into account the principles of the Treaty of Waitangi. It is consistent with Treaty settlement legislation. It does this by:
- requiring councils to work in partnership with tangata whenua when developing provisions in their plans and policy statements for indigenous biodiversity;
 - including provisions to involve tangata whenua in the management and decision-making for indigenous biodiversity;
 - enabling the application of te ao Māori and the recognition of mātauranga Māori;
 - providing a pathway for tangata whenua to acknowledge, identify and protect taonga species; and

- providing more enabling provisions for use and development on specified Māori land and Treaty settlement land.
- 68 In response to feedback received through consultation and engagement, changes have been made to the NPSIB provisions to enable appropriate development and use of Māori land.
- 69 The Crown must have particular regard to certain post-settlement legal frameworks when exercising a function, power or duty under the RMA, of which the following are applicable to the proposed NPSIB:
- The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Te Ture Whaimana o Te Awa o Waikato / the Vision and Strategy for the Waikato River;
 - Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 and Te Awa Tupua status and the four Tupua te Kawa intrinsic values for the Whanganui River; and
 - Ngāti Rangi Claims Settlement Act 2019 and Te Mana Tupua and the four Ngā Toka Tupua intrinsic values of Te Waiū-o-Te-Ika / Whangaehu River.
- 70 Analysis has concluded that the proposed NPSIB will not impede the implementation of these or any other existing settlements. The NPSIB clarifies that nothing in it limits any relevant provision of any iwi participation legislation (as defined in section 58L² of the Act).
- 71 A summary of analysis of impacts on tangata whenua is included in Appendix 3.

Timing and 28-day rule

- 72 No waiver of the 28-day rule is sought. Once approved by the Executive Council, the National Policy Statement for Indigenous Biodiversity will be gazetted and come into effect 28 days later.

Compliance

- 73 The NPSIB complies with:
- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - the principles and guidelines set out in the Privacy Act 2020;
 - relevant international standards and obligations; and
 - the Legislation Guidelines (2018 edition).

² Section 58L of the Resource Management Act 1991 defines iwi participation legislation as 'legislation (other than this Act), including any legislation listed in [Schedule 3](#) of the Treaty of Waitangi Act 1975, that provides a role for iwi or hapū in processes under this Act.

Regulations Review Committee

74 I consider there are no grounds for the Regulations Review Committee to draw this instrument to the attention of the House of Representatives under Standing Order 327.

s 9(2)(h)

75

s 9(2)(h)

76

s 9(2)(h)

77

s 9(2)(h)

Impact Analysis

Regulatory Impact Statement

78 A Regulatory Impact Statement (RIS) is attached at Appendix 4.

79 Minor changes have been made to the Regulatory Impact Analysis associated with the NPSIB to reflect the changes discussed in this paper. This has not affected the substance of the paper or the resulting conclusions.

80 The Ministry for the Environment's Regulatory Impact Analysis Panel reviewed the Regulatory Impact Statement (RIS) "Maintaining indigenous biodiversity under the Resource Management Act 1991". The panel considered the document met the quality assurance criteria for regulatory impact analysis.

RMA section 32 evaluation report

81 A section 32 evaluation report was considered by Cabinet in December 2022 [CAB-22-MIN-0600 refers].

82 The report includes a comprehensive Cost-Benefit Analysis, which outlines estimated costs for different groups and the benefits expected to be realised over time. It highlights, for example, there is a high level of variability in how the NPSIB will impact each council, depending on the location and type of indigenous biodiversity along with the extent to which councils have already addressed requirements under the Resource Management Act 1991 (e.g.

Significant Natural Area assessment cost range estimated from \$222,000 - \$2.2m for territorial authorities). Short-term implementation costs are expected to reduce substantially over time.

- 83 The section 32 report concluded that the NPSIB objective is the most appropriate way to achieve the purpose of the RMA to promote sustainable management in relation to indigenous biodiversity. The provisions are assessed as being effective and efficient to achieve the NPSIB objective of maintaining Aotearoa New Zealand's terrestrial indigenous biodiversity while also enabling subdivision, use and development in appropriate forms and places.
- 84 The changes to the NPSIB have not affected the overall conclusions that were drawn in the section 32 report. An addendum to the RMA section 32 evaluation report outlining the effect of changes to the NPSIB is included at appendix 5.

Climate Implications of Policy Assessment

- 85 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Human Rights

- 86 There are no identified inconsistencies with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

Engagement with tangata whenua

- 87 Feedback from submissions and engagement with tangata whenua has informed the development of the NPSIB. The key elements of that engagement are set out in paragraphs 31 to 45 above.
- 88 Engagement with tangata whenua has consistently shown a concern that significant natural area protection would limit development opportunities and have a disproportionate impact on Māori lands because of historical disadvantages and the extent of indigenous biodiversity on their lands.
- 89 Since the exposure draft further changes have been made to:
- strengthen the requirement to enable development on Māori lands; and
 - require a partnership approach across the NPSIB.

Ministerial consultation

- 90 As required by the Cabinet report back, the Minister of Energy and Resources, Minister for the Environment, and Associate Minister for the

Environment (Māori rights and interests) have been consulted on the changes outlined in this Cabinet paper.

- 91 The Minister for the Environment has agreed to the submission of this Cabinet paper.

Government agency consultation

- 92 The following agencies were consulted on this paper: The Treasury, Ministry of Foreign Affairs and Trade, Ministry for Primary Industries, Ministry of Housing and Urban Development, Ministry of Innovation and Employment, Ministry of Transport, Te Puni Kōkiri, Land Information New Zealand, Department of Conservation, New Zealand Defence Force, and Waka Kotahi New Zealand Transport Agency.

- 93 The Department of Prime Minister and Cabinet was informed of the paper.

- 94 Te Arawhiti has also been consulted on options for engaging with iwi/Māori going forward, and while not making a recommendation on the proposals observed that:

- there is a clear need for a regulatory response to the biodiversity crisis;
- there has been engagement to develop the NPSIB over the past four years, including three rounds of nation-wide hui and targeted engagement with a wide range of Māori organisations;
- in response to issues raised throughout engagement, changes have been made to the NPSIB to provide flexibility for application to Māori land, to require local authorities to involve tangata whenua as partners, and for a strengthened role for tangata whenua in taonga species management; and
- s 9(2)(f)(iv) [REDACTED]

- 95 Te Arawhiti also noted that the work on biodiversity incentives, that will support implementation of the NPSIB, may also serve to balance Crown responsibilities under te Tiriti o Waitangi to:

- protect biodiversity (Article 1);
- guarantee rights to Māori (Article 2); and
- ensure equitable outcomes (Article 3).

Communications

- 96 There has been ongoing interest in the development and finalisation of the NPSIB. There is equally a high level of interest in incentives to ameliorate any costs associated with protecting significant natural areas.

- 97 In approximately late June/early July and subject to Cabinet decisions, I plan to make an announcement of the NPSIB alongside an announcement for the discussion document on a biodiversity credit system.
- 98 Officials will publish the Order in Council in the New Zealand Gazette, provide a copy of the NPSIB to every local authority, and provide a summary of my decisions to those who have made submissions (as required by section 52(3)(c) of the RMA).
- 99 The MfE and Treasury websites will publish the RIS within 30 working days of the final decision on the NPSIB being taken.

Proactive Release

- 100 I intend to release this Cabinet paper following Cabinet decisions proactively within 30 business days, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Associate Minister for the Environment (Biodiversity) recommends that Cabinet Committee:

- 1 **Note** that in December 2022 Cabinet agreed, in principle, to the National Policy Statement for Indigenous Biodiversity (NPSIB), subject to a report back on the following matters [CAB-22-MIN-0600 refers]:
 - a. The provision of further advice on the definition of Māori lands in the NPSIB;
 - b. Invite the Associate Minister for the Environment (Māori rights and interests) to assist in finalising the iwi/Māori implementation plan for the NPSIB;
 - c. The provision of further advice on the appropriate consent pathway for renewable electricity generation;
- 2 **Note** that a number of changes to the NPSIB are proposed as part of the report back noted in recommendation 1;

Report back on the definition of Māori Lands

- 3 **Agree** that, to ensure consistency with the Natural and Built Environment Bill, the NPSIB use as its definition of 'specified Māori land' the land categories in the definition of 'protected Māori land' used in the Natural Built Environment Bill;
- 4 **Agree** that Treaty settlement land also be covered by the more flexible Māori lands provisions including clause 3.18 of the NPSIB, which provides a more flexible management approach for indigenous biodiversity and use and development on those lands;

Report back on the iwi/Māori implementation plan for the NPSIB

- 5 **Note** that the iwi/Māori implementation plan for the NPSIB is progressing, and the Associate Minister for the Environment (Māori rights and interests) has been invited to assist with finalising this plan;

Report back on an appropriate consent pathway for renewable electricity generation

- 6 **Agree** to include amendments that provide greater flexibility and clarity for how the gateway tests of ‘significant national or regional public benefit’ and ‘no practicable alternative locations’ are applied to Renewable Electricity Generation and Electricity Transmission Network Asset proposals or developments by;

- a. including definitions of electricity transmission network, electricity transmission network assets and renewable electricity generation assets;
- b. clarifying that proposals for renewable electricity generation assets (including community schemes and those that connect to distribution networks) and electricity transmission network assets are considered to be of significant national or regional public benefit;
- c. constraining the ‘no practicable alternative locations’ gateway test for renewable electricity generation and electricity transmission network asset development to consideration of sites within the region that avoid, or have less effect on, a significant natural area or indigenous biodiversity;

A Biodiversity Credit System for Aotearoa New Zealand

- 7 **Note** that engagement with Māori and landowners on the NPSIB has highlighted a high level of interest in incentives to ameliorate any costs associated with protecting significant natural areas, including opportunity costs of protecting biodiversity at the expense of alternative development opportunities;
- 8 **Note** that the Associate Minister for the Environment (Biodiversity) will seek agreement to release a discussion document on a biodiversity credit system for Aotearoa New Zealand in mid-2023;
- 9 **Note** that Cabinet consideration of the discussion document on a biodiversity credit system will be sought prior to public consultation;

Biodiversity credits are part of a wider suite of climate-related land-use and sequestration policies

- 10 **Note** that in addition to a biodiversity credit system the Government is progressing workstreams to address the dual climate change and biodiversity crises, which broadly fall into two categories:
- a. supporting gross emissions reductions through the New Zealand Emissions Trading Scheme and more broadly decarbonise the economy;

b. incentivising land-use decisions that bring positive environmental benefits;

11 s 9(2)(f)(iv), s 9(2)(g)(i)

12

13

14 **Note** that decisions and announcements that provide clarity on future policy direction and workstream interactions are timely, even if the policies are implemented over different time periods;

Supporting documentation for the NPSIB

15 **Note** the attached documents have been updated to reflect changes to the NPSIB since it was agreed in principle by Cabinet [CAB-22-MIN-0600];

16 s 9(2)(h)

17 **Note** the Treaty of Waitangi Analysis Report is attached as Appendix 3;

18 **Note** the Regulatory Impact Statement is attached as Appendix 4;

19 **Note** the addendum to the section 32 report is attached as Appendix 5;

20 **Note** the draft Implementation Plan is attached as Appendix 6;

21 **Note** that the NPSIB is consistent with the recommendations report, which has been prepared in accordance with s46A(4)(c) of the (Resource Management Act 1991 (RMA));

22 **Note** that the Associate Minister for the Environment (Biodiversity) has made no changes to officials' recommendations under s52(1)(b)(i) of the RMA and the recommendations report is therefore accepted;

- 23 **Note** that the Associate Minister for the Environment (Biodiversity) considers the making of the NPSIB appropriate under section 52 of the RMA;

Bringing the NPSIB into force

- 24 **Note** that engagement with tangata whenua has consistently shown a concern that significant natural area protection would limit development opportunities and have a disproportionate impact on Māori lands and this engagement has informed the development of the NPSIB;
- 25 **Note** that the NPSIB has been amended to address tangata whenua concerns by:
- a. including a separate provision for Māori land where the usual protections for significant natural areas do not apply;
 - b. requiring a partnership approach across the NPSIB, including to develop a management approach for significant natural areas, taonga species and indigenous biodiversity; and
 - c. providing flexibility to enable development for Māori land.
- 26 **Agree** to the final National Policy Statement for Indigenous Biodiversity in Appendix 1;
- 27 **Note** the Minister for the Environment has agreed to the submission of this Cabinet paper;
- 28 **Authorise** the Associate Minister for the Environment (Biodiversity) to make minor drafting amendments to the NPSIB and supporting documents as required prior to gazettal, to ensure it gives effect to its policy intent and for alignment with other national direction as appropriate;
- 29 **Invite** the Associate Minister for the Environment (Biodiversity) to submit the final NPSIB to the Governor-General in Council for approval;
- 30 **Agree** that the Order in Council promulgating the NPSIB will be notified in the New Zealand Gazette, subject to approval from the Governor-General in Council;
- 31 **Agree** the National Policy Statement for Indigenous Biodiversity is gazetted and announced at the same time as the Biodiversity Credits Discussion Document, noted in recommendations 8 and 9, is made public;
- 32 **Note** the Associate Minister for the Environment (Biodiversity) will circulate media material to his ministerial colleagues prior to the announcement of the NPSIB.
- 33 **Invite** the Associate Minister for the Environment to circulate a detailed communications plan on the announcement of the NPSIB alongside the discussion document on a biodiversity credit system for Cabinet's consideration.

34 **Note** that the NPSIB will come into effect 28 days after gazettal.

Authorised for lodgement

Hon James Shaw

Associate Minister for the Environment (Biodiversity)

Appendix 1: National Policy Statement for Indigenous Biodiversity

s 9(2)(h)

Appendix 3: Treaty of Waitangi Analysis

CAB-23-SUB-0202

**Appendix 3: Māori rights & interests and Te Tiriti o
Waitangi Analysis for the National Policy Statement for
Indigenous Biodiversity**



Māori rights & interests and Te Tiriti o Waitangi Analysis for the National Policy Statement for Indigenous Biodiversity

Purpose and Context

1. Which work programme/workstream/project does this analysis apply to?

National Policy Statement for Indigenous Biodiversity (NPSIB).

2. Is this a cross agency programme/workstream/project or only MfE?

The NPSIB was initially jointly developed by The Department of Conservation and the Ministry for the Environment, but since 2020 it has been progressed by the Ministry for the Environment.

3. Who are the key contacts and points of accountability for this programme/project?

Hayden Johnston – Director: Water and Land Use Policy.

Jo Burton – Manager: Land and Water Systems.

4. Are there existing policies that you are refining or is this analysis for a new policy?

This is analysis for a new policy.

5. At what stage of the policy process is the work? How will that influence this analysis?

Māori rights and interests and Treaty of Waitangi/te Tiriti o Waitangi impacts have been considered and taken into account throughout the development of the NPSIB. It has influenced the final NPSIB.

The work is in the decision-making stage of the policy cycle. The final version of the policy is due to be sent to Cabinet for approval.

Understanding Māori rights and interests

6. What is the background/context of this policy topic/issue/area?

Aotearoa New Zealand's current biodiversity management system is failing to protect threatened species and halt the decline of indigenous biodiversity. The Resource Management Act 1991 (RMA) is one of the key tools to manage indigenous biodiversity. Under the RMA it's a council function to maintain indigenous biodiversity. Councils are also required to protect significant indigenous biodiversity and to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. These are RMA matters of national importance. However, the RMA provisions about indigenous biodiversity have been subject to different interpretation, application and monitoring by councils.

Under the RMA there hasn't been a process for how councils should work with tangata whenua and communities to identify significant areas of indigenous biodiversity, or direction about how councils should involve tangata whenua in managing and maintaining indigenous biodiversity. Nor has there been direction about how to work with tangata whenua to protect taonga species.

These issues have led to repeat litigation costs, confusion and uncertainty, and an undervaluing of indigenous biodiversity in decision-making. Inconsistent application of the RMA and inadequate regulatory protection are contributing to the loss of our indigenous biodiversity. It has also led to dissatisfaction and opposition from Māori landowners about council processes.

7. What is the proposed objective? What is the problem that needs to be solved? What are the policy outcomes being sought?

The NPSIB aims to resolve the issues noted above by providing relevant direction to councils. The RMA enables national policy statements, such as the NPSIB, to provide national direction to councils about how to address matters of national significance. A National Policy Statement sets objectives and policies on matters of national significance and may include more specific direction on how to do this.

The objective of this National Policy Statement is

- to maintain indigenous biodiversity across Aotearoa New Zealand so that there is no overall loss in indigenous biodiversity after the commencement date; and
- to achieve this:
 - through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and
 - by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and
 - by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; andwhile providing for the social, economic, and cultural wellbeing of people and communities now and in the future.

The NPSIB will require councils to:

- work in partnership with tangata whenua in the management of indigenous biodiversity
- consistently identify and map areas with significant indigenous vegetation and habitats of significant indigenous fauna (SNAs) using criteria set out in the NPSIB
- follow principles for working with tangata whenua, landowners and communities to identify SNAs, including partnership
- work in partnership with tangata whenua to manage indigenous biodiversity and SNAs and enable development on Māori land and Treaty settlement land
- work in partnership with tangata whenua on the identification and protection of taonga species
- include provisions in their plans and policy statements to:
 - maintain indigenous biodiversity and avoid or manage adverse effects of new development, use and activities on indigenous biodiversity within SNAs;
 - manage the impacts on indigenous biodiversity outside of SNAs; and
 - record areas outside of SNAs that are highly mobile fauna areas;

- set out the significant effects that need to be avoided in SNAs and provide a consenting pathway for addressing other effects through the effects management hierarchy;
- promote restoration of degraded SNAs, threatened and rare ecosystems and prepare regional biodiversity strategies and plan for increasing indigenous vegetation cover; and
- undertake monitoring of indigenous biodiversity.

The NPSIB

Policy 1: Indigenous biodiversity is managed in a way that gives effect to the decision-making principles and takes into account the principles of the Treaty of Waitangi.

Policy 2: Tangata whenua exercise kaitiakitanga for indigenous biodiversity in their rohe, including through:

- (a) managing indigenous biodiversity on their land; and
- (b) identifying and protecting indigenous species, populations and ecosystems that are taonga; and
- (c) actively participating in other decision-making about indigenous biodiversity.

Policy 3: A precautionary approach is adopted when considering adverse effects on indigenous biodiversity.

Policy 4: Indigenous biodiversity is resilient to the effects of climate change.

Policy 5: Indigenous biodiversity is managed in an integrated way, within and across administrative boundaries.

Policy 6: Significant indigenous vegetation and significant habitats of indigenous fauna are identified as significant natural areas (SNAs) using a consistent approach.

Policy 7: SNAs are protected by avoiding or managing adverse effects from new subdivision, use and development.

Policy 8: The importance of maintaining indigenous biodiversity outside SNAs is recognised and provided for.

Policy 9: Certain established activities are provided for within and outside SNAs.

Policy 10: Activities that contribute to New Zealand's social, economic, cultural, and environmental well-being are recognised and provided for as set out in this National Policy Statement.

Policy 11: Geothermal SNAs are protected at a level that reflects their vulnerability, or in accordance with any pre-existing underlying geothermal system classification.

Policy 12: Indigenous biodiversity is managed within plantation forestry while providing for plantation forestry activities.

Policy 13: Restoration of indigenous biodiversity is promoted and provided for.

Policy 14: Increased indigenous vegetation cover is promoted in both urban and non-urban environments.

Policy 15: Areas outside SNAs that support specified highly mobile fauna are identified and managed to maintain their populations across their natural range, and information and awareness of highly mobile fauna is improved.

Policy 16: Regional biodiversity strategies are developed and implemented to maintain and restore indigenous biodiversity at a landscape scale.

Policy 17: There is improved information and regular monitoring of indigenous biodiversity.

8. *Does this new policy sit under or relate to any of the reform programmes, policy areas or mahi in MfE, or other government agencies?*

The NPSIB is related to the Aotearoa New Zealand Biodiversity Strategy (ANZBS) and the Resource Management Reform work. Its development was led initially jointly by the Department of Conservation and the Ministry for the Environment and recently by the Ministry for the Environment Land and Water Policy Team.

There have been recommendations for a national policy statement on indigenous biodiversity since 2000.

A proposed NPSIB was publicly consulted on in 2011. Submissions showed diverging views between the public and stakeholders as to how the loss of indigenous biodiversity should be addressed, the level of regulation that should apply consistently to all land irrespective of ownership, reflecting the reality that indigenous biodiversity loss is a complex problem of public interest. Some Māori submitters were concerned that further regulation preventing the loss of indigenous biodiversity on Māori land would conflict with their rights for tino rangatiratanga.

A stakeholder-led Biodiversity Collaborative Group (BCG) was set up in 2017 to bring together a range of strong interests in biodiversity management – National Iwi Chairs' Forum, through the Pou Taiao Iwi Leaders' Group, and stakeholders. The BCG spent 18 months, from March 2017 until October 2018, developing a draft NPSIB and recommendations for supporting measures. The BCG undertook hui to seek tangata whenua views.

Their draft was then further developed by the Ministry for the Environment and the Department of Conservation and publicly consulted on between November and March 2019/ 2020. Two further rounds of nationwide regional hui were undertaken (see section 14 for a full description of engagement).

Feedback was then incorporated into an exposure draft which was available for public submissions in June and July 2022.

The NPSIB and associated work on a biodiversity credit system¹ contribute to Te Pae Tawhiti: the whole-of-government approach connected to the Wai 262 claim and the subsequent Waitangi Tribunal report Ko Aotearoa Tēnei: Report on the Wai 262 (Wai 262). This is because the NPSIB references the report through including:

¹ A biodiversity credit is an economic instrument that recognises (in a standardised way) projects or activities on public or private land, including whenua Māori, that provide positive outcomes for biodiversity, against which nature positive claims can be made. A biodiversity credit system is the institutional settings that enable and govern the creation, sale and purchase of, and claims made against, biodiversity credits.

- objectives and policies that recognise tangata whenua as kaitiaki
- decision-making principles which require councils to:
 - form strong and effective partnerships
 - recognise the bond between tangata whenua and indigenous biodiversity based on whakapapa, and the kaitiaki responsibility of care, and
 - enable the application of te ao Māori and mātauranga Māori.
- strengthening the role of tangata whenua decision making and requiring councils to partner with them in the implementation of the NPSIB
- providing a pathway for tangata whenua to identify and manage taonga species in partnership with councils
- specific provisions applicable to management of indigenous biodiversity on Māori land
- enabling the use of mātauranga Māori and ensuring it is at a local level specific to hapū and iwi.

9. *What have Māori already said to the Ministry and/or Government that may relate directly, or indirectly, to this policy area?*

Māori interest in indigenous biodiversity management

As Treaty partners, kaitiaki and landowners, the issue of biodiversity decline is of particular interest to Māori. The need for mātauranga Māori and the Treaty of Waitangi/ te Tiriti o Waitangi to be taken into account and given effect to in resource management decision-making has been repeatedly emphasised. The findings of the Waitangi Tribunal report on Wai 262 (relating to law and policy affecting Māori culture and identity) and the need for government regulation to reflect its recommendations was often raised.

A key message was that iwi, hapū and whānau at place needed to be actively included at every level of the decision-making process. National regulation needs to allow for local priorities and knowledge to be applied. Resourcing and capacity building were noted as essential to supporting their role in resource management decision-making.

The iwi and hapū engaged with expressed a strong desire to see Aotearoa New Zealand's indigenous biodiversity restored.

As landowners, they expressed differing aspirations for the use of land. They have generally supported provisions within the NPSIB which provide flexibility in how the framework for managing indigenous biodiversity applies to Māori lands. Some remain concerned that the NPSIB will affect their development aspirations for their land and tino rangatiratanga.

10. *What has Te Rōpū Whakamana i te Tiriti o Waitangi / the Waitangi Tribunal said that might be relevant?*

Recommendations for change were made in the 2011 Waitangi Tribunal's report Ko Aotearoa Tēnei: Report on the Wai 262. The Tribunal highlighted that there are a range of provisions in

the RMA that recognise and give effect to relationships of tangata whenua with te taiao (e.g. sections 6(e), 7(a), 8, 33 and 188). They also found that implementation of these provisions has been inconsistent, unmonitored and in some cases non-compliant with legislation.

In its recommendations the Waitangi Tribunal considered that the Treaty of Waitangi/ te Tiriti o Waitangi requires the Crown to actively protect the continuing obligations of kaitiaki towards the environment as one of the key components of te ao Māori, and that this obligation cannot be absolved by statutory devolution of the Crown's environmental management powers and functions to local government.

The Tribunal further considered that the degree of control exercised by Māori and their influence in decision-making needed to be resolved in a principled way using the concept of kaitiakitanga. The exact degree of control accorded to Māori as kaitiaki was likely to differ widely in different circumstances and could not be determined in a generic way.

The Tribunal determined that there is no one-size fits-all mechanism for balancing kaitiaki interests against those of others. In any given situation, not all interests will be in competition – some may be quite readily reconciled. Where they do conflict, not all will carry the same weight – some interests will be entitled to greater protection than others.

The Tribunal noted the claimants in these Waitangi Tribunal cases have sought Māori control of taonga Māori. Though, where there are cases of overriding national interest, it is arguable this should not occur. The Tribunal concluded that whilst kaitiaki interest is important, and protections for it must be more than token, it is not a trump card. Likewise, the Crown argued for Crown or local authority control of all decision-making affecting taonga in the environment; in some instances this may be appropriate, but in others, entirely inappropriate.

The Tribunal determined, that where, in the balancing process, it is found that kaitiaki should be entitled to priority, the system ought to deliver kaitiaki control over the taonga in question. Where that process finds kaitiaki should have a say in decision-making but more than one voice should be heard, it should deliver partnership for the control of the taonga, whether with the Crown or with wider community interests. In all areas of environmental management, the system must provide for kaitiaki to effectively influence decisions that are made by others, and for the kaitiaki interest to be accorded an appropriate level of priority.

In summary the Tribunal noted the following:

- a Treaty-compliant environmental management regime is one that is capable of delivering the following outcomes, by means of a process that balances the kaitiaki interest alongside other legitimate interests:
 - control by Māori of environmental management in respect of taonga, where it is found that the kaitiaki interest should be accorded priority;
 - partnership models for environmental management in respect of taonga, where it is found that kaitiaki should have a say in decision-making but other voices should also be heard; and
 - effective influence and appropriate priority to the kaitiaki interests in all areas of environmental management when the decisions are made by others.

In respect to taonga the Tribunal noted:

- The environment as a whole is not considered to be a taonga, in the sense that the term is used in the Treaty. Such an all-encompassing interpretation devalues the status

of taonga and the rights and obligations that flow from them. In mātauranga Māori, the environment is the manifestation of the atua themselves – Rangi-nui, Papa-tū-ā-nuku, Tāne-mahuta, Haumia-tiketike, and so on – who transcend and have dominion over taonga. Thus, taonga are the particular iconic mountains or rivers, for example, or specific species of flora and fauna. Whether a resource or a place is a taonga can be tested, as it can for taonga species. Taonga have mātauranga Māori relating to them, and whakapapa that can be recited by tohunga. Certain iwi or hapū will say that they are kaitiaki. Their tohunga will be able to say what events in the history of the community led to that kaitiaki status and what obligations this creates for them. In sum, a taonga will have kōrero tuku iho (a body of inherited knowledge) associated with them, the existence and credibility of which can be tested.

- The Tribunal recommended that the Ministry for the Environment commit to building Māori capacity to participate in RMA processes and in the management of taonga, and that this commitment should include providing resources to assist kaitiaki with the development of iwi resource management plans and assisting kaitiaki to develop the resources or technical skills needed to exercise their kaitiaki roles.

The Tribunal described kaitiakitanga as follows:

- Kaitiakitanga is the obligation, arising from the kin relationship, to nurture or care for a person or thing. It has a spiritual aspect, encompassing not only an obligation to care for and nurture not only physical well-being but also mauri.
- People can (indeed, must) also be kaitiaki. In the human realm, those who have mana (or, to use Treaty terminology, rangatiratanga) must exercise it in accordance with the values of kaitiakitanga – to act unselfishly, with right mind and heart, and with proper procedure. Mana and kaitiakitanga go together as right and responsibility, and that kaitiakitanga responsibility can be understood not only as a cultural principle but as a system of law.
- In te ao Māori the relationship between kaitiaki and the environment is founded in whanaungatanga – the web of relationships that embraces living and dead, present and past, human beings and the natural environment. Whanaungatanga is the basis on which the world is ordered, the organising principle of mātauranga Māori, the source of whakapapa.

The Tribunal noted the following about customary use:

- The flora and fauna of the bush are taonga species, and the Māori relationship with them is one of kaitiakitanga. To name only a few examples: leaves and herbs provide medicine, can accompany sacred ceremonies such as tohi (baptism) or pure (rites of cleansing), and are used as adornments in other ceremonies such as tangi; feathers adorn cloaks; plant fibres are woven; trees yield timber for carving and bark for medicine; birdsong inspires whaikōrero (formal speech-making), karanga (ceremonial calling or chanting), and mōteatea (song poetry); and relationships with forests or marine areas embody deep values built up through generations of interaction. Customary use is one of the most significant activities by which mātauranga Māori is retained and transmitted.

In respect to The Treaty of Waitangi/te Tiriti o Waitangi and the RMA the Tribunal noted:

- The Tribunal does not accept the Crown's argument that its Treaty obligation to protect the kaitiaki relationship with the environment is absolved by the statutory devolution of its environmental management powers and functions to local government. The Crown

argued that, given this devolution, its only remaining concern was to ensure that the framework for administration was Treaty compliant – which, the Crown submitted, it is. But this argument has been repeatedly rejected by the Tribunal and the courts. The Ngawha report, for example, found that:

The Treaty was between the Māori and the Crown. The Crown obligation under article 2 to protect Māori rangatiratanga is a continuing one. It cannot be avoided or modified by the Crown delegating its powers or Treaty obligations to the discretion of local or regional authorities. If the Crown chooses to so delegate, it must do so in terms, which ensure its treaty duty of protection is fulfilled.

Thus, the Crown's Treaty duties remain and must be fulfilled, and it must make its statutory delegates accountable for fulfilling them too.

11. *Who are the appropriate Tiriti partners to be forming relationships and working with in relation to things policy design, drafting, decision-making and governance?*

Iwi, hapū, Post-settlement Governance entities, and Māori landowners across New Zealand. Those iwi Māori who have geothermal interests.

12. *Where is it appropriate or necessary to provide for Māori control and/or influence and or participation in different parts of the process and policy?*

There has been Māori participation and influence in the development of this NPSIB, which is appropriate and necessary. Scope for Māori to co-design the implementation of this NPSIB has been provided for in the draft implementation plan and – discussion with the National Iwi Chairs Forum technicians and Te Puni Kōkiri is ongoing regarding the detail as to how this will be delivered/undertaken.

13. *What do Māori have to say about how Tiriti principles like rangatiratanga can best be given effect to in relation to this policy area and work? How will this engagement with Māori be resourced?*

Some of the key themes and outcomes sought by iwi/Māori through the early engagement were :

- tangata whenua whakapapa back to te taiao - the mauri of the native flora and fauna lies at the heart of who they are
- tangata whenua should be part of the decision-making process for indigenous biodiversity and resourcing for this is important
- there should be a greater and clearer decision-making role for taonga species
- tangata whenua should determine how they develop their land, but SNAs could limit development.

Following testing of the NPSIB Exposure Draft, the following outcomes were also sought:

- a stronger partnership approach across the NPSIB
- a role for tangata whenua in SNA identification at a local level
- provision for appropriate use and development on Māori lands (taking a broad definition of Māori lands including Treaty Settlement Land)
- the important role of tangata whenua in understanding and managing geothermal ecosystems within their rohe be recognised

- the implementation of the NPSIB be led by Iwi/Māori and that this be adequately resourced.

14. *What are the opportunities for Treaty partners to participate in the process? E.g., points of influence, co-design of policy, decision-making, opportunities for sharing resources?*

Engagement with iwi/Māori

The Biodiversity Collaborative Group (BCG) that developed the first draft of the NPSIB included a representative of the National Iwi Chairs Forum, through the Pou Taiao Iwi Leaders Group (ILG). The BCG's draft NPSIB was informed by a report prepared by Te Kahu o te Taiao (TKOTT), the Mātauranga Māori rōpū of the National Iwi Chairs Forum.

The joint Ministry for the Environment (MfE) and Department of Conservation (DOC) project team worked to refine the BCG's draft NPSIB from October 2018 onwards. This included engagement with tangata whenua, councils and key stakeholders.

There were three rounds of nationwide hui during the development of the NPSIB.

- the BCG undertook a round of hui when developing their draft
- in early 2019 DOC ran a series nationwide regional hui across the country, meeting with hapū, iwi, Māori Trusts and Māori landowners. The kaupapa of these hui were focused on five biodiversity topics, including the NPSIB.
- MfE then held a second round of nationwide, regional hui in early 2020. There were 13 hui held with iwi/Māori across the country; (Whangarei Auckland, Hamilton, New Plymouth, Tauranga, Rotorua, Taupo, Whanganui, Napier, Gisborne, Wellington, Nelson, Dunedin) with approximately 200 hapū and iwi participants attending.

In 2021, MfE also contacted all iwi with geothermal systems about the options for provisions to protect geothermal ecosystems and held hui with those who wished and were able to engage. In October 2021, as advised by Te Arawhiti, MfE engagement with Post Settlement Governance Entities (PSGE) on national direction under development and RM reforms was aligned. All existing PSGE's (70 plus) were contacted and invited to register their interest in the development of the NPSIB. No response to this invitation was received.

An exposure draft NPSIB was available for public submissions for a 6-week period during June and July 2022. Engagement on that included contacting all iwi/Māori who had submitted on the previous 2019 consultation draft and some key Māori organisations. Three online hui were held for those who communicated a willingness and capacity to attend.

Further specific engagement with Iwi technicians also occurred in 2022.

MfE and Te Puni Kōkiri are working with the National Iwi Chairs Forum technicians on developing a specific implementation plan for Māori for the NPSIB. A draft plan will be developed and circulated wider for further input.

Te Tiriti o Waitangi - Legislative Responsibilities

15. *Which legislative responsibilities apply to this work?*

As part of the Crown, there is an obligation for the Ministry of the Environment to ensure that the NPSIB is developed in a way that is consistent with the principles of the Treaty of Waitangi/ te Tiriti o Waitangi. These principles are generally agreed to include:

- **Partnership:** Both the Crown and Māori have a positive duty to act in good faith, fairly, reasonably and honourably towards the other;
- **Active protection:** The Crown has a positive duty to protect Māori interests - which may include property, taonga, resources, mātauranga etc; and
- **Redress:** Past wrongs give rise to a right to redress.

The principle of Partnership requires Treaty partners to act reasonably and with the utmost good faith towards each other. Acting in good faith in this context means taking the necessary steps to understand how the NPSIB affects Māori interests, and to make decisions informed by this knowledge. The principle of Partnership also implies a role for Māori in decision-making on issues that affect Māori interests. Necessarily, this will involve striking a balance between the tino rangatiratanga of Māori and the Crown's right to govern. The Waitangi Tribunal has emphasised the Crown's obligation to specifically provide for tino rangatiratanga.

The principle of Partnership and involvement of Māori in decision making on issues that affect Māori interests overlaps with that of Active Protection, which speaks to the Crown's obligation to actively protect Māori interests, including the exercise of tino rangatiratanga over taonga.

The articles of the Treaty that give rise to the principles are:

- Article One - the government gained the right to govern
- Article Two - the Crown promises that Māori will have the right to make decisions over resources and taonga which they wish to retain
- Article Three - the Crown promises that its obligations to New Zealand citizens are owed equally to Māori.

Statutory obligations

In addition to the Crown's obligation to act consistently with the principles of the Treaty of Waitangi/ te Tiriti of Waitangi, there are other relevant legislative requirements to consider the Treaty of Waitangi/ te Tiriti of Waitangi and the effect of the NPSIB on Māori. These notably include:

Public Service Act 2020

Subpart 3 of the Act, which outlines the Crown's relationships with Māori, specifies that:

- the role of the public service to include "supporting the Crown in its relationships with Māori under the Treaty of Waitangi"; and
- the role of public service leadership to include "developing and maintaining the capability of the public service to engage with Māori and to understand Māori perspectives."

Resource Management Act 1991

Part 2 of the RMA, which describes the purpose and principles of the Act, states that persons exercising functions under the RMA must:

- **Section 6(e)** - Recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga as a matter of national importance;
- **Section 7(a)** - Have particular regard to kaitiakitanga; and
- **Section 8** - Take into account the principles of the Treaty.

In addition to these Acts, there are several relevant Treaty Settlement Acts and commitments that the NPSIB needs to be consistent with.

Post-settlement legal frameworks including:

- Te Awa Tupua (Whanganui River Claims Settlement) Act 2017
- Ngāti Rangī Claims Settlement Act 2019
- Te Ture Whaimana o Te Awa o Waikato (Waikato River Vision and Strategy)
- Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010
- Te Urewera Act 2014
- Ngāi Tahu Claims Settlement Act 1998
- Te Rūnanga o Ngāi Tahu Act 1996.

Te Tiriti o Waitangi - Article One

The government gained the right to govern (Kawanatanga)

16. *How does the proposal/policy affect all New Zealanders? What is the effect on Māori (if different, how, and why?)*

The NPSIB aims to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date. It aims to achieve this by:

- (i) recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and
- (ii) recognising people and communities, including landowners, as stewards of indigenous biodiversity; and
- (iii) protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and
- (iv) providing for the social, economic, and cultural wellbeing of people and communities now and in the future.

The NPSIB is a response under the RMA to the biodiversity decline. In Aotearoa New Zealand thousands of species are threatened with, or at risk of, extinction. Many of our most threatened species are present on private land.

The NPSIB helps to achieve the objectives and outcomes sought by Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy (ANZBS). The ANZBS is a non-regulatory tool that

sets out the strategic direction for the protection, restoration and sustainable use of biodiversity.

The NPSIB references the recommendations in *Ko Aotearoa Tēnei: Report on the Wai 262 Claim*. The NPSIB provides a strengthened role in the resource management system for tangata whenua in management and decision-making for indigenous biodiversity. It also provides a pathway for tangata whenua to identify and protect their taonga species.

The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, called (SNAs), is a requirement of the RMA. The NPSIB sets out consistent criteria for identifying SNAs and provisions for councils to manage SNAs.

The NPSIB also includes specific provisions for:

- tangata whenua as partners
- a locally specific and flexible approach for Māori land and Treaty settlement land
- a pathway for the protection of taonga species and ecosystems
- geothermal SNAs
- allowing existing activities to continue so long as adverse effects do not increase
- specified highly mobile fauna
- maintenance of improved pasture
- plantation forests with SNAs
- restoring priority areas
- creating regional biodiversity strategies.

Indigenous biodiversity and te ao Māori

In te ao Māori, all living things are interconnected and people are related through whakapapa to the environment. Identity, wellbeing, knowledge and how the culture is nourished, are indivisible from the health of Papatūānuku. This relationship comes with responsibilities as kaitiaki to care for and nurture both flora and fauna.

Māori have a very close connection to their land embodied in the concept of tūrangawaewae. This represents Māori connection to the land linked with tribal and personal identity and mana.

Geothermal SNAs

The NPSIB aims to achieve a nationally consistent approach to manage and protect geothermal SNAs in a manner that reflects their vulnerability to use or development. Geothermal ecosystems are among the rarest and most distinctive natural systems in Aotearoa New Zealand. They are classified as naturally uncommon (rare before human colonisation), and four of the five geothermal ecosystem types found in Aotearoa New Zealand are critically endangered.

A key outcome from the policies is to recognise the important role of tangata whenua in understanding and managing geothermal ecosystems within their rohe. To ensure the rights and interests of tangata whenua are given effect to, clause 3.13 of the NPSIB specifically requires all councils with geothermal SNAs in their region or district to work in partnership with tangata whenua when making or changing policy statements and plans to give effect to clause 3.13(1).

To recognise and provide for the rights and interests of tangata whenua in relation to geothermal resources, clause 3.13(1)(c) requires local authorities to provide for new

occupation, use, and development of geothermal SNAs on Māori land and Treaty settlement land. This use must be in a manner that has regard to the vulnerability of the geothermal SNA or the existing geothermal system classification utilised by the local authority.

Clause 3.13(1)(c) also requires that any new use or development is done in accordance with tikanga. To give effect to this implementation requirement, councils will need to work closely with tangata whenua and have a clear understanding of the values and vulnerability geothermal ecosystem.

The provisions will help ensure that the rights and interests of tangata whenua are explicitly considered in the management of geothermal SNAs and enable Māori to utilise geothermal SNAs on their lands where appropriate. The provision recognises the strong connection tangata whenua have with geothermal systems and that each ngāwhā (geothermal) area is unique for tangata whenua and may require unique management.

The provisions will empower tangata whenua as partners and ensure they have an active role in decision-making on geothermal SNAs within their rohe and will help ensure that any use of geothermal SNAs on Māori land and Treaty settlement land in accordance with tikanga.

The provisions allow existing geothermal classification systems to continue which have been developed in collaboration with tangata whenua.

The policies may constrain use of geothermal SNAs for cultural purposes, or constrain rights and interests, if the vulnerability assessment by the expert determines a high bar for protection is required.

This policy upholds the Treaty of Waitangi/ te Tiriti o Waitangi principles for the protection of Māori interests over geothermal areas by providing for new occupation, use, and development of geothermal SNAs on Māori land and Treaty settlement land according to tikanga.

Iwi/ hapū submissions on the exposure draft note that rights and interests in geothermal taonga have not yet been addressed by whānau, hapū and iwi with the Crown.

The NPSIB will not limit any rights or remedies which can be confirmed in Stage 3 of Wai 2358. The NPSIB does not address ownership and does not allocate resources.

– *Will the proposal affect different Māori groups differently?*

Providing for the appropriate use and development on Māori land is important for cultural reasons and because of the historical barriers to the full and optimal use of Māori land for economic development. These historical barriers mean that Māori land is often less developed and more likely to have retained its indigenous cover. The NPSIB avoids imposing restrictions on the development of Māori land so that this land may be managed consistent with Māori aspirations for that land.

– *What could the unintended impacts on Māori be and how does the proposal mitigate these?*

Māori land and Treaty settlement land

Analysis shows that 48 per cent of Māori customary and freehold land under Te Ture Whenua Māori Act 1993 (TTWM Act) and 34 per cent of Treaty settlement land has indigenous vegetation cover, compared with only 16 per cent of other private land. The spatial analysis of mapped and 'estimated' SNAs in the NPSIB Cost Benefit analysis shows that compared to

general tenure land parcels where only 1.2% contain estimated total SNA coverage of greater than or equal to 90%:

- 8.1% of all Māori customary and freehold land parcels contain estimated total SNA coverage of greater than or equal to 90%
- 6.1% of all Treaty settlement land parcels contain estimated total SNA coverage of greater than or equal to 90%.

This indicates that indigenous biodiversity and SNAs are disproportionately located on Māori land and Treaty settlement land. There is therefore the potential for the NPSIB effects management provisions for SNAs and indigenous biodiversity to disproportionately affect the use and development of Māori land and Treaty settlement land.

The NPSIB therefore provides a targeted management approach for Māori land and Treaty settlement land that provides additional flexibility for use and development to support the social, economic and cultural well-being of tangata whenua while maintaining and protecting indigenous biodiversity.

17. How does the proposal demonstrate good government within the context of the Treaty?

Tangata whenua as partners

The intent of the policy is that local authorities must involve tangata whenua as partners in the management of indigenous biodiversity to the extent that they wish to be involved. This will help ensure that councils have the information and relationships to work with tangata whenua to incorporate mātauranga and tikanga Māori into the core of the planning framework, in environmental monitoring, and effects management (for example through how they are monitored and through tikanga tools like rāhui). Regional biodiversity strategies are also a key mechanism through which this can occur.

Tangata whenua will be involved in RMA processes including decision making for managing indigenous biodiversity. This upholds the Treaty principles for rangatiratanga for decisions in relation to their lands and the things of value to them within the resource management system framework. The requirements for the use of mātauranga Māori and for allowing sustainable customary use uphold the principle of rangatiratanga over resources and foster kaitiaki rights and obligations.

The NPSIB takes into account and gives effect to the principles of the Treaty of Waitangi/te Tiriti o Waitangi through many incorporated changes. Examples of these are:

- strong recognition of tangata whenua as partners with councils in the management of indigenous biodiversity
- recognition of the mana of tangata whenua as kaitiaki of indigenous biodiversity in the NPSIB objective
- inclusion of 6 decision-making principles that inform the NPSIB (see below)
- requirements for councils to involve tangata whenua as partners in the processes (including decision-making processes) for managing the implementation of the NPSIB, to the extent that they wish to be involved
- more enabling provisions for use and development on Māori land and Treaty settlement land and a requirement for councils to act in good faith when partnering

with tangata whenua and owners of Māori land and Treaty settlement land on management approaches

- a stronger role for tangata whenua in the management of identified taonga
- extended scope for customary use
- requirements for enabling the use of mātauranga Māori and with the consent of tangata whenua
- geothermal provisions that require councils to work in partnership with, and to provide for, tangata whenua to use and develop geothermal systems in geothermal SNAs according to tikanga as well as to protect the vulnerability of the SNA, consistent with existing classifications systems.

The decision-making principles that must inform the implementation of this National Policy Statement are as follows:

- (a) prioritise the mauri, intrinsic value and well-being of indigenous biodiversity:
- (b) recognise the bond between tangata whenua and indigenous biodiversity based on whakapapa relationships:
- (c) recognise the obligation and responsibility of care that tangata whenua have as kaitiaki of indigenous biodiversity:
- (d) recognise the role of people and communities as stewards of indigenous biodiversity:
- (e) enable the application of te ao Māori, and mātauranga Māori:
- (f) form strong and effective partnerships with tangata whenua.

Related risks are that local government and tangata whenua may lack the necessary capacity and resources to proactively exercise their kaitiaki role or partner as it is anticipated through these provisions.

MfE and Te Puni Kōkiri are working with the National Iwi Chairs Forum technicians on developing a specific implementation plan for Māori for the NPSIB. A draft plan will be developed and circulated wider for further input.

Funding has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package.

– *What are the legal and/or Treaty settlement commitments for the Crown?*

Post-settlement legal frameworks

The Crown has a duty to protect Treaty settlements. The NPSIB is not intended to affect Treaty settlements and arrangements. The NPSIB aligns with pre-existing requirements in Treaty settlements and does not seek to trump, or interfere with, their implementation by local authorities. When implementing the NPSIB, the Crown and councils will need to engage with iwi and hapū who have interests and settlements covering certain areas to ensure that implementation of the NPSIB is not inconsistent with the settlements.

Freshwater is out of scope of the proposed NPSIB (except for the promotion of the restoration and enhancement of wetlands) and this reduces the crossover with these settlement Acts. Where there is crossover, the settlement Acts will override the NPSIB.

Identifying and managing SNAs will also promote outcomes desired for the health and wellbeing of the Whanganui and Whangaehu rivers set out in the respective settlement

legislation. Protecting and managing SNAs will improve the overall health in the catchments, including increasing biodiversity, reducing erosion, and providing for aesthetic values.

In relation to the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, where there is crossover between the NPSIB and the Act, there is alignment between the intent of the provisions in the proposed NPSIB and the outcomes sought from Act. Regional councils will be required under the proposed NPSIB to create a landscape scale vision for the biodiversity strategies and this aligns with intrinsic value (b) in section 13 of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017². These will be developed collaboratively with local communities, stakeholders and tangata whenua to enhance public buy-in, improve alignment with community priorities and will also need to be taken into account and provided for Te Awa Tupua.

Engagement with Whanganui iwi occurred through the two rounds of hui, both in early 2019 at the DOC-led biodiversity hui, and again at the MfE-led hui in February 2020. MfE continues to engage with Whanganui iwi more broadly at a senior leadership level.

In relation to the Ngāti Rangi Claims Act 2019, the proposed NPSIB enables community involvement in environmental management and the goals for catchment wide management of resources through the requirement for regional councils to develop regional biodiversity strategies. This will be done in conjunction with stakeholders, communities and tangata whenua. This will help the aim to unite regions behind the best interests of the river, amongst other community restoration priorities, in line with intrinsic value (b) set out in section 108 of the Ngāti Rangi Claims Act 2019³. Creating regional biodiversity strategies will improve the catchment-based and ecosystem-wide management of biodiversity in regions.

Regional hui and engagement occurred in Whanganui both in the early 2019 DOC-led hui, and the early 2020 MfE-led hui – records are not clear as to whether representatives from these settlements attended these regional hui..

In relation to the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Te Ture Whaimana o Te Awa o Waikato - Vision and Strategy for the Waikato River, the final NPSIB does include the restoration and enhancement of wetlands, which is also included as part of the Vision and Strategy for Waikato River and it is seen as an important part of improving the health of the river and the wider catchment. There is alignment between the proposed policy and the strategy. The NPSIB identifies wetlands as an important area that needs to be restored and enhanced by being promoted through objectives, policies and methods in policy statements and plans. Councils will be required to implement this consistent with the NPSIB but are likely already doing this by giving effect to the Waikato River Vision and Strategy.

The proposed NPSIB also promotes landscape scale restoration and enhancement visions for regions through the development of Regional Biodiversity Strategies. Regional councils will

² Intrinsic value (b) in section 13 of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 is *Ko Te Kawa Tuarua E rere kau mai i te Awa nui mai i te Kahui Maunga ki Tangaroa*: the great River flows from the mountains to the sea: Te Awa Tupua is an indivisible and living whole from the mountains to the sea, incorporating the Whanganui River and all of its physical and metaphysical elements.

³ Intrinsic value (b) in Section 108 of the the Ngāti Rangi Claims Act 2019 is *He wai-ariki-rangi, he wai-ariki-nuku, tuku iho, tuku iho*: An interconnected whole; a river revered and valued from generation down to generation.

develop these strategies (if they haven't already) with community and tangata whenua input. Waikato Regional Council doesn't have a formal 'regional biodiversity strategy' document completed, but has numerous indigenous biodiversity projects already underway including their 'restoring nature, connecting communities' cooperative indigenous biodiversity management programme which aims to unite communities behind common goals for achieving biodiversity outcomes. This is in line with the strategies in the Waikato River Vision and Strategy to consider the Waikato River as a whole indivisible body and to recognise and protect appropriate sites associated with the Waikato River that are of significance to the Waikato regional community.

Engagement has occurred with Waikato iwi over the course of the development of the NPSIB. This has occurred through the DOC-led biodiversity hui in early 2019, and again at a specific hui in Wellington in early 2020 to discuss the NPSIB.

Other settlement Acts

Analysis of other settlement Acts has concluded that:

- the outcomes sought by both the Te Urewera Act 2014 and the proposed NPSIB are in broad alignment. They both recognise the intrinsic value of biodiversity and want to see indigenous biodiversity preserved, restored and enhanced
- the NPSIB does not conflict with settlements that use nohonanga entitlements. It aims to provide for sustainable customary use in accordance with tikanga and taonga protection.

It should be noted that te Rūnanga o Ngāi Tahu outlined in their submissions (both on the 2019 draft NPSIB and on the 2022 exposure draft) that their involvement in the development of the NPSIB has not met their expectations considering the Treaty Settlement / principles obligations to inform them about changes to policies that will affect taonga species and have particular regard to their views. Te Rūnanga o Ngāi Tahu stated during early engagement that they considered the amount of engagement carried out as a breach of the principles and obligations under the Treaty.

Officials did not directly engage with Te Rūnanga o Ngai Tahu while Ministers and the Ministry were working with Te Rūnanga o Ngai Tahu on an engagement strategy and framework – and during a time when priorities were on RM reform and fresh water. However, they were contacted to seek their direct engagement over the exposure draft.

Te Rūnanga o Ngai Tahu's exposure draft submission notes that the NPSIB now is an improvement from the 2019 draft but they remain concerned about some aspects.

Te Tiriti o Waitangi - Article Two

The Crown promises that Māori will have the right to make decisions over resources and taonga which they wish to retain (Rangatiratanga)

18. Does the proposal allow for the Māori exercise of rangatiratanga while recognising the right of the Crown to govern?

The Crown promises that Māori will have the right to make decisions over resources and taonga which they wish to retain (Rangatiratanga). The NPSIB provides for this by requiring that territorial authorities:

- work in partnership with tangata whenua of any rohe in their district, **using an agreed process**, to determine the indigenous species, populations, and ecosystems in that rohe that are taonga; (and these are acknowledged taonga), whilst recognising that tangata whenua have the right not to determine the indigenous species, populations and ecosystems in their rohe that are taonga, and to choose the level of detail at which any acknowledged taonga, or their location or values, are described.
- enable the development of Māori land and Treaty settlement land including by:
 - (a) enabling new occupation, use, and development of Māori land and Treaty settlement land to support the social, cultural, and economic wellbeing of tangata whenua; and
 - (b) enabling the provision of new papakāinga, marae and ancillary community facilities, dwellings, and associated infrastructure; and
 - (c) enabling alternative approaches to, or locations for, new occupation, use, and development that avoid, minimise, or remedy adverse effects on SNAs and identified taonga on Māori land and Treaty settlement land, and enable options for offsetting and compensation; and
 - (d) recognising and being responsive to the fact that there may be no or limited alternative locations for tangata whenua to occupy, use, and develop their lands; and
 - (e) recognising that there are circumstances where development may prevail over indigenous biodiversity; and
 - (f) recognising and being responsive to historical barriers tangata whenua have faced in occupying, using, and developing their ancestral lands.

– *Can/should the proposal, or parts of it, be led by Māori?*

The partnership approach in the NPSIB provides for the identification and management of indigenous biodiversity developed together with Māori. Development of Māori land and Treaty settlement land is enabled so as to cover Māori aspirations for their land. While the function for indigenous biodiversity management sits with councils (under the RMA), the partnership approach provides for a strong voice for Māori in developing appropriate management approaches.

The provision for the identification and management of toanga species requires a process for this to be agreed between councils and tangata whenua. This represents an opportunity for a Māori led process.

MfE and Te Puni Kōkiri are working with the National Iwi Chairs Forum technicians on a specific implementation plan for Māori for the NPSIB. A draft plan will be developed and circulated wider for further input.

A total of \$19.46 million has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package. This includes the development and delivery of an iwi/Māori implementation plan. The biodiversity incentives work programme, funded initially by the Prime Minister’s Emerging Priorities Fund, also supports the delivery of the package and is being used to establish pilot projects.

– *What options/mechanisms are available to enable rangatiratanga and Māori to make decisions for Māori?*

See above.

19. Have Māori had a role in design/implementation?

See engagement under section 14.

– If so, who?

Post settlement governance entities, iwi and hapū authorities, Māori landowners, Māori.

– If not, should they?

20. Does the proposal:

– enhance Māori wellbeing? If so, how?

The NPSIB enhances Māori wellbeing by strengthening their role in indigenous biodiversity management, providing a pathway for Māori to identify and work in partnership to manage their taonga species, and enabling Māori to work in partnership to develop appropriate management approaches for indigenous biodiversity and development on Māori land and Treaty settlement land. It also enhances Māori wellbeing by recognising: the bond between tangata whenua and indigenous biodiversity based on whakapapa relationships and the obligation and responsibility of care that tangata whenua have as kaitiaki of indigenous biodiversity, enabling the application of te ao Māori and mātauranga Māori and enabling sustainable customary use.

– build Māori capability or capacity? If so, how?

MfE and Te Puni Kōkiri are working with the National Iwi Chairs Forum technicians on developing a specific implementation plan for Māori for the NPSIB. A draft plan will be developed and circulated wider for further input.

A total of \$19.46 million has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package. This includes the development and delivery of an iwi/Māori implementation plan.

The biodiversity incentives work programme, funded initially by the Prime Minister's Emerging Priorities Fund, also supports the delivery of the package and is being used to establish pilot projects.

21. How does the proposal provide for the relationship between Māori and the environment?

See Section 16 above.

22. Is there any aspect of this issue that Māori consider to be a taonga?

Yes – environmental species specific to an iwi or hapu, who have kaitiaki status, will be taonga for them. . As noted in the Tribunal's Wai 262 report, environmental taonga will generally have kōrero tuku iho and mātauranga Māori associated with them.

– How have policy makers come to their view of whether the issue is a taonga, and is there consensus?

Through engagement with iwi Māori. There can be differing views about whether all species are taonga or those specific to an iwi or hapū.

– *What effect does that have on the proposal?*

The NPSIB provides a pathway for tangata whenua to identify their taonga species in RMA policies and plans. Through their involvement in the identification of taonga (using an agreed process) tangata whenua have the right not to determine the indigenous species, populations and ecosystems in their rohe that are taonga, and to choose the level of detail at which any acknowledged taonga, or their location or values, are described (clause 3.19). Changes have been made during the NPSIB development to ensure councils work in partnership with tangata whenua to determine taonga species and that tangata whenua are involved not only in the identification of taonga species but also in their management (to the extent they wish to be).

23. Does the proposal provide any opportunities to address Māori rights and interests in natural taonga?

Through their involvement in the identification of taonga (using an agreed process) tangata have the right not to determine the indigenous species, populations and ecosystems in their rohe that are taonga, and to choose the level of detail at which any acknowledged taonga, or their location or values, are described (clause 3.19). Councils must work in partnership with tangata whenua to protect taonga species and to involve tangata whenua in their management.

MfE and Te Puni Kōkiri are working with the National Iwi Chairs Forum technicians on developing a specific implementation plan for Māori for the NPSIB. A draft plan will be developed and circulated wider for further input.

A total of \$19.46 million has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package. This includes the development and delivery of an iwi/Māori implementation plan. The biodiversity incentives work programme, funded initially by the Prime Minister's Emerging Priorities Fund, also supports the delivery of the package and is being used to establish pilot projects.

24. Does the proposal restrict the scope of resolutions for Māori rights and interests issues?

In relation to the development of Māori land, the NPSIB provisions recognise the potential of the NPSIB to have a disproportionate impact on Māori land and Treaty settlement land because of extensive indigenous vegetation on these lands and historical barriers to development. It therefore provides a much more flexible approach designed to enable development. This approach is to avoid the NPSIB imposing restrictions on the development of Māori land and Treaty settlement land.

25. What considerations have been given to hapū/iwi data sovereignty? If mātauranga has been shared by Māori, how will/has this taonga been appropriately used and stored?

Through their involvement in the identification of taonga (using an agreed process) tangata have the right not to determine the indigenous species, populations and ecosystems in their rohe that are taonga, and to choose the level of detail at which any acknowledged taonga, or their location or values, are described (clause 3.19).

Councils are required to actively involve tangata whenua in developing processes for managing information provided by tangata whenua including providing for how it may remain

confidential if appropriate particularly in relation to the identification and management of species, populations, and ecosystems as taonga species (clause 3.3(6)).

Te Tiriti o Waitangi - Article Three

The Crown promises that its obligations to New Zealand citizens are owed equally to Māori (Oritetanga)

26. Does the proposal aim to achieve equitable outcomes for Māori? If so, are there clear targets and commitment to key deliverables?

The proposal recognises historical barriers to the development of Māori land and seeks to enable equitable outcomes for Māori. There are specific exceptions in the NPSIB to enable the development of Māori land and Treaty settlement land.

27. What are the mechanisms to ensure equitable Māori participation and/or leadership in setting priorities, resourcing, implementing, and evaluating the policy?

MfE and Te Puni Kōkiri are working with the National Iwi Chairs Forum technicians on developing a specific implementation plan for Māori for the NPSIB. A draft plan will be developed and circulated wider for further input.

A total of \$19.46 million has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package. This includes the development and delivery of an iwi/Māori implementation plan. The biodiversity incentives work programme, funded initially by the Prime Minister's Emerging Priorities Fund, also supports the delivery of the package and is being used to establish pilot projects.

28. How does the proposal contribute to Māori being sufficiently resourced to participate?

Resourcing for iwi/Māori participation in the implementation of the NPSIB will be covered as part of the Biodiversity Protections and Incentives Budget 2022 initiative (B22) funding package.

29. How does the proposal differ from previous efforts to address the issue?

There is no existing national policy statement for indigenous biodiversity. Section 6(c) of the RMA requires that the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna to be recognised and provided for. Approaches for doing this vary around the motu.

30. How does the proposal demonstrate that policy makers have looked at the proposal from the perspective of legal values such as natural justice, due process, fairness, and equity?

The NPSIB contains six decision-making principles that must inform the implementation of this National Policy Statement as follows:

- (a) prioritise the mauri, intrinsic value and well-being of indigenous biodiversity:
- (b) recognise the bond between tangata whenua and indigenous biodiversity based on whakapapa relationships:

- (c) recognise the obligation and responsibility of care that tangata whenua have as kaitiaki of indigenous biodiversity:
- (d) recognise the role of people and communities as stewards of indigenous biodiversity:
- (e) enable the application of te ao Māori, and mātauranga Māori:
- (f) form strong and effective partnerships with tangata whenua.

31. How does the proposal demonstrate that policy makers have looked at the issue from the perspective of tikanga values?

See above.

Costs and Benefits for Māori

32. Will the proposal impose costs on Māori?

Resourcing for iwi Māori participation in the implementation of the NPSIB will be covered as part of the Biodiversity Protections and Incentives Budget 2022 initiative (B22) funding package.

33. Will the proposal result in benefits to Māori in addition to those related to the programme outcomes?

Increased capacity to participate in resource management decision making.

34. How does the proposal contribute to improved central and local government capability to effectively work with Māori?

MfE and Te Puni Kōkiri are working with the National Iwi Chairs Forum technicians on developing a specific implementation plan for Māori for the NPSIB. A draft plan will be developed and circulated wider for further input.

A total of \$19.46 million has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package. Some of this will be available to assist councils.

35. Will the implementation of the proposal require any specific guidance or training?

The engagement approach on implementation outlined above will highlight any specific guidance or training needs.

Māori Crown relations risks and opportunities

36. Are there any relationship risks involved in this proposal?

Through the development of the NPSIB we have heard from tangata whenua that they are concerned about SNA identification and protection on their land and its potential to limit development aspirations. Hapū in Northland, in particular, were concerned about the impact of SNAs because of extensive indigenous vegetation cover on their lands.

Concern about SNAs has arisen related to council processes to protect SNAs in the absence of the NPSIB. The NPSIB aims to improve how councils work together with tangata whenua, landowners and communities.

Further, this relationship risk has been mitigated by amendments to the NPSIB to require a partnership approach between councils and tangata whenua to manage indigenous biodiversity and enable development on Māori lands and Treaty settlement land. Recent engagement in Northland has assisted to explain the intent of the NPSIB and to hear hapū views. It served to reset relationships and represents an opportunity going forward for working together on the development of the iwi/Māori implementation plan.

Potential risks to relationships with tangata whenua also derive from the engagement process. Some tangata whenua sought direct engagement with them and co-design of the NPSIB. However, significant engagement has occurred. Three rounds of nationwide hui and submissions, more specific focussed hui, and online hui and submissions about the exposure draft have informed the development of the NPSIB. The NPSIB has responded to concerns expressed through engagement, in particular to require a partnership approach to manage indigenous biodiversity and enable development on Māori land and Treaty settlement land, and to enable tangata whenua to be involved in not only the identification but also the management of their taonga species.

The approach in the NPSIB means that Treaty settlement land as well as Māori customary and freehold land under Te Ture Whenua Māori Act 1993 is covered by the more flexible Māori land provisions. This is because of the extensive indigenous biodiversity on these. Avoiding imposing further restrictions on the development of Māori land and Treaty settlement land may be seen by some New Zealanders as creating a two-tier system for general land that is inequitable to non-Māori landowners. The Department of Conservation is also concerned about the enabling provisions and the extent of land captured by this broader approach.

Officials recommend retaining Treaty settlement land covered by the Māori land provisions because:

- 48% of Māori customary and freehold land and 34% of Treaty settlement land has indigenous vegetation cover, compared with only 16% of general private land
- There is a clear rationale for having a broader definition for NPSIB (compared with NPS-HPL) on the basis that more land is potentially affected. The extent of Treaty settlement land that was returned without restrictions as commercial property and therefore potentially affected by restrictions in the NPSIB (275,900 ha)² is far larger (twelve times) than the extent of Treaty settlement land estimated to be Highly Productive Land (21,900 ha) returned without restrictions.
- There is four times more indigenous forest cover (likely to meet the criteria as SNA) on both Treaty settlement land and Māori customary and freehold land when compared with general land.
- There is larger proportion of both Treaty settlement land and Māori customary and freehold land (6.1% and 8.1% respectively) that have estimated SNA coverage of over 90% compared with general land (1.2%).
- There is little crossover between both Māori customary and freehold land and Treaty settlement land and productive land use classifications (most is Land Use Class 6 to 8).

This compounds historical disadvantages for development, making protection of biodiversity on these land types disproportionately restrictive of development aspirations.

- Treaty settlement land can be located adjacent to Māori customary and freehold land and considered and managed together by Māori.

This broader approach was supported by National Iwi Chairs Forum technicians.

Appendix 4: Regulatory Impact Statement

Appendix 5: Addendum to National Policy Statement for Indigenous Biodiversity: Evaluation Report under section 32 of the RMA, November 2022

Appendix 6: Implementation Plan

Cabinet Minute

CAB-23-MIN-0202: Minute of Decision National Policy Statement for Indigenous Biodiversity



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

National Policy Statement for Indigenous Biodiversity

Portfolio **Associate Environment (Biodiversity)**

On 29 May 2023, Cabinet:

- 1 **noted** the contents of the submission under CAB-23-SUB-0202;
- 2 **authorised** a group of Ministers, comprising the Prime Minister, Hon Kelvin Davis, Hon Dr Megan Woods, Hon Kiri Allan, Hon David Parker, Hon Willow-Jean Prime and Hon James Shaw, to have Power to Act to take decisions on the submission.

Rachel Hayward
Secretary of the Cabinet

Cabinet Minute

CAB-23-MIN-0225: Minute of Decision National Policy Statement for Indigenous Biodiversity



Cabinet

5

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Additional Item: Report Back on National Policy Statement for Indigenous Biodiversity

Portfolio Associate Environment (Biodiversity)

On 6 June 2023, Cabinet:

- 1 **noted** the previous decision authorising a group of ministers, comprising the Prime Minister, Hon Kelvin Davis, Hon Dr Megan Woods, Hon Kiri Allan, Hon David Parker, Hon Willow-Jean Prime and Hon James Shaw, to have Power to Act to take decisions on the submission *National Policy Statement for Indigenous Biodiversity* [CAB-23-MIN-0202];
- 2 **noted** that ministers with Power to Act approved the National Policy Statement for Indigenous Biodiversity with amendments to the following areas:
 - 2.1 application: the National Policy Statement for Indigenous Biodiversity does not apply to renewable electricity generation and to electricity transmission infrastructure and activities as defined by the National Policy Statement for Renewable Electricity Generation (NPS-REG) and the National Policy Statement on Electricity Transmission (NPS-ET) as it is currently being reviewed;
 - 2.2 commencement date;
 - 2.3 decision making principles;
 - 2.4 definition of Specified Māori land;
 - 2.5 social, economic, and cultural wellbeing;
 - 2.6 SNAs on Specified Māori land;
 - 2.7 acknowledged and identified Taonga;
 - 2.8 restoration;
 - 2.9 increasing indigenous vegetation cover;
- 3 **noted** that the Associate Minister for the Environment (Biodiversity) will work with the Minister of Conservation and the Minister of Agriculture in the finalisation of the discussion document;
- 4 **noted** the relevant responsible Minister for Biodiversity under the RMA, or Natural and Built Environment Bill (once enacted) will report to Cabinet on the NPSIB's implementation;

- 5 **agreed** that, when the amended NPS-REG and NPS-ET are due to be considered by Cabinet, that the Associate Minister for the Environment (Biodiversity) will be formally consulted on the options.

A handwritten signature in black ink, appearing to read 'Rachel Hayward', written in a cursive style.

Rachel Hayward
Secretary of the Cabinet