Recommendations and decisions report on the National Policy Statement for Indigenous Biodiversity

2023

Ministry for the Environment
Manatū Mō Te Taiao

Te Kāwanatanga o Aotearoa
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Contents

Key abbreviations

Definition	Abbreviation
Assessment of environmental effects	AEE
Te Mana o te Taiao | Aotearoa New Zealand Biodiversity Strategy	ANZBS
Business and Biodiversity Offsets Programme	BBOP
Biodiversity Collaborative Group	BCG
Department of Conservation	DOC
Electricity transmission	ETN
Iwi Leaders Group Pou Taiao	Iwi Leaders Technicians
Local Government New Zealand	LGNZ
Natural and Built Environment Act (proposed)	NBA
Natural and Built Environment Bill	NBE Bill
National Environmental Standards for Freshwater	NES-F
National Environmental Standards for Plantation Forestry	NES-PF
National Planning Framework	NPF
National policy statement	NPS
National Policy Statement for Freshwater Management	NPS-FM
National Policy Statement for Highly Productive Land	NPS-HPL
National Policy Statement for Indigenous Biodiversity	NPSIB
National Policy Statement for Renewable Electricity Generation	NPS-REG
National Policy Statement on Urban Development	NPS-UD
New Zealand Coastal Policy Statement	NZCPS
New Zealand Defence Force	NZDF
Public conservation land	PCL
Queen Elizabeth II National Trust	QEII National Trust
Regional biodiversity strategy	RBS
Renewable electricity generation	REG
Resource Management Act 1991	RMA
Regional Policy Statement	RPS
Significant geothermal feature	SGF
Significant natural area	SNA
Ministry for the Environment	the Ministry
Taupō Volcanic Zone	TVZ
Wildlife Act 1953	WLA

Executive summary

Purpose

The proposed National Policy Statement for Indigenous Biodiversity (NPSIB) will give increased clarity and direction to councils on their roles and responsibilities for protecting and maintaining indigenous biodiversity under the Resource Management Act 1991 (RMA). The proposed NPSIB's objective is to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date. This means the maintenance and support of:[1]

- the population size of indigenous species
- indigenous species' occupancy across their natural range
- the properties and functions of ecosystems and habitats used or occupied by indigenous biodiversity
- the full range and extent of ecosystems and habitats used or occupied by indigenous biodiversity
- connectivity between, and buffering around, ecosystems used or occupied by indigenous biodiversity
- the resilience and adaptability of ecosystems
- the restoration and enhancement of ecosystems and habitats.

The proposed NPSIB is limited to indigenous biodiversity in terrestrial environments, and some aspects of wetlands, and will apply across all land types in Aotearoa. The scope does generally not extend to the coastal marine area or freshwater bodies – there are limited exceptions, such as for regional biodiversity strategies. The NPSIB will affect the management of indigenous biodiversity, particularly in lowland areas and on private and Māori land where many of our threatened species, habitats and ecosystems are found.

Background

The Ministry for the Environment (the Ministry) publicly consulted on the proposed NPSIB and discussion document from 26 November 2019 to 14 March 2020 by asking submitters 62 questions. We received over 7,000 submissions, the majority in support of the proposed NPSIB and broadly supportive of its intent.

In late August 2020, officials presented a summary of submissions report to the then Associate Minister for the Environment, Hon Nanaia Mahuta.[2] Officials have been developing policy informed by key themes raised during the consultation and through submissions. The Ministry then did further consultation with councils, Māori, stakeholders and agencies, including an exposure draft process between June and July 2022. We recommend several areas of the proposed NPSIB are amended because of the feedback we received.

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1 Draft National Policy Statement for Indigenous Biodiversity. 2019. cl 1.7(3)

2 Ministry for the Environment. 2020. *He Kura Koiora i hokia: A proposed National Policy Statement for Indigenous Biodiversity: Summary of Submissions.* Wellington: Ministry for the Environment.

Officials' recommendations

This report outlines key issues raised in submissions from public consultation or from other targeted consultation. It outlines our recommended amendments to the objectives, policies and implementation requirements of the proposed NPSIB in response to those issues. Our recommendations address both substantive and technical issues. These will help in implementing and achieving the intent of the national policy statement. There were several smaller changes needed for workability or clarity, which have not all been outlined here.

Several recommendations also respond to changes in other pieces of national direction, or to ensure that the NPSIB is consistent with existing pieces of national direction. We have strived for consistency where practical and appropriate. We have clearly laid out areas where there are still differences and the reasons for those differences.

A table of consolidated recommendations is in appendix 1. The Ministry has prepared a separate evaluation report under section 32A of the RMA, which discusses policy options and rationale in more detail.[3]

[3] Ministry for the Environment. 2023. *National Policy Statement for Indigenous Biodiversity Evaluation Report under Section 32 of the Resource Management Act 1991*. Wellington: Ministry for the Environment.

Introduction

This report gives an overview of submissions and recommendations for changes to the Associate Minister for the Environment (Biodiversity) on the proposed National Policy Statement for Indigenous Biodiversity (NPSIB) in accordance with sections 46A(4)(c) and 52(3)(b) of the Resource Management Act 1991 (RMA). This report is split into two parts.

Part A provides:

- information on the context for and role of the proposed NPSIB
- a summary of the process for developing the proposed NPSIB
- an overview of the consultation and submissions process.

Part B outlines the policy analysis and rationale for the proposed changes to each aspect of the proposed NPSIB, which was circulated for public consultation. For each aspect, it provides:

- the proposal consulted on between 26 November 2019 and 14 March 2020
- the key issues from submissions (from the consultation on the proposed and exposure drafts of the NPSIB)
- an analysis of the key issues raised in submissions and the reasoning for recommendations
- recommendations to the Associate Minister for the Environment (Biodiversity).

Part A

1 Context and role of the proposed NPSIB

Aotearoa New Zealand has unique and distinctive indigenous biodiversity because of extended geographic isolation. Many of our species of flora and fauna are internationally distinct – only being found in Aotearoa – making our country's biodiversity globally important. This indigenous biodiversity also makes important contributions to our social, cultural and economic wellbeing and is a critical part of our identity as New Zealanders.

However, our indigenous biodiversity is declining due to several drivers, including global climate change, habitat clearance, degradation and fragmentation because of competing priorities for land use, the impacts of pest animals and invasive weeds, new diseases and pollution. The New Zealand Government is committed to halting this decline and helping species, habitats and ecosystems to thrive.

Under the Convention on Biological Diversity,[4] Aotearoa has obligations in the conservation and sustainable use of biodiversity. In particular:

- Article 6 requires Contracting Parties to develop national strategies and integrate them into relevant cross-sectoral plans, programmes and policies. Te Mana o te Taiao | Aotearoa New Zealand Biodiversity Strategy (ANZBS)[5] is the national strategy of Aotearoa.
- Article 7 requires Contracting Parties to identify and monitor important components of biodiversity.
- Article 10 requires consideration of the conservation and sustainable use of biological diversity to be integrated into national decision-making.

Why a national policy statement is appropriate

The RMA is the key piece of legislation managing the environment of Aotearoa on private land, including its indigenous biodiversity. The RMA governs the use of all natural and physical resources of Aotearoa and nearly all forms of resource use affecting biodiversity. It requires significant indigenous vegetation and the significant habitats of indigenous fauna to be protected as a matter of national importance, and particular regard had to the intrinsic values of ecosystems.

Under the RMA, the Minister for the Environment can prepare national policy statements (NPSs) that outline objectives and policies for matters of national significance relevant to achieving the purpose of the RMA. In this instance, the power has been delegated to the Associate Minister for the Environment (Biodiversity). Areas of significant indigenous vegetation and significant habitats of indigenous fauna must be protected as a matter of national importance in section 6(c) of the RMA. The Act also requires particular regard to be had for the intrinsic values of ecosystems (section 7(d)).

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[4] United Nations Convention on Biological Diversity. Entered into force 29 December 1993, ratified by Aotearoa New Zealand 16 September 1993.

[5] Department of Conservation. 2020. *Te Mana O Te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020*. Wellington: Department of Conservation.

Role of the proposed NPSIB

The proposed NPSIB aims to clarify biodiversity provisions in the RMA by giving clear direction on the outcomes sought for indigenous biodiversity and clear requirements for councils to achieve those outcomes.

Much of the remaining indigenous biodiversity of Aotearoa is on privately owned and Māori land, which includes many ecosystems poorly (or not) represented on public conservation land (PCL). The proposed NPSIB seeks actions from councils to recognise the vital role we all play in ensuring indigenous biodiversity is maintained. Partnerships and collaboration between landowners, communities and public agencies are critical to the success of the proposed NPSIB.

The proposed NPSIB also further clarifies the biodiversity functions of the RMA. 'Maintenance' is defined in the proposed NPSIB and is supported through a policy framework directing how adverse effects on indigenous biodiversity should be managed. This policy framework clarifies that protecting significant natural areas (SNAs) is only part of the maintenance function, which also includes biodiversity management outside SNAs and restoration and enhancement. The proposed NPSIB aims to ensure the perseverance of as many of our remaining species, habitats and ecosystems as possible. It places value on not only pristine habitats and ecosystems but also those modified and degraded where they retain important attributes.

The proposed NPSIB addresses key gaps and inconsistencies in managing indigenous biodiversity under the RMA and gives a balance between flexibility and clear direction. It builds on existing good practice by councils but also seeks a step change in the management of indigenous biodiversity to better allow us to protect it and support the identity of Aotearoa for generations to come.

Following the 2019–2020 NPSIB public consultation, and before the preparation of this report, the Minister for the Environment announced the RMA will be repealed and replaced with three new acts: the Natural and Built Environment Act (NBA), the Spatial Planning Act and the Climate Change Adaptation Act.

Work is already underway on the replacement acts, but the NPSIB is proceeding under the current RMA system. This is critical to ensuring a timely response to the ongoing loss of indigenous biodiversity, and to help manage the transition of indigenous biodiversity regulation to the new system. The proposed NBA is the main replacement Act for the RMA. It will require a National Planning Framework (NPF) to be prepared to promote specified environmental outcomes. The NPF will fulfil the role of current national direction under the RMA, but as a single, more integrated, coherent and effective framework with specific conflict-resolution and strategic-direction functions.

We anticipate the 'policy intent' of the emerging and existing RMA national direction will be carried through to the NPF, with some redrafting and repurposing. The policy intent in the NPSIB will give direction and requirements for identifying significant areas of biodiversity, managing adverse effects on those areas, and other aspects such as developing regional biodiversity strategies (RBSs). The Natural and Built Environment Bill (NBE Bill) incorporates significant biodiversity areas across marine, freshwater and terrestrial environments.

2 Process for developing the proposed NPSIB

The statutory requirements for developing a NPS are set out in the RMA in sections 45 to 55. For developing the proposed NPSIB, the previous Associate Minister for the Environment (with delegated responsibility from the Minister for the Environment) chose to use a minister-led process, as outlined in section 46A(3)(b) of the RMA, as opposed to a board of inquiry process.

The proposed NPSIB was developed by building on a draft NPSIB created by the Biodiversity Collaborative Group (BCG). The BCG was set up in 2017 and comprised key stakeholders including Federated Farmers, Forest and Bird, the Environmental Defence Society, the Forest Owners Association, industry groups and a representative of the Iwi Chairs Forum. It was commissioned to produce a draft NPSIB and recommend supporting and complementary measures. Its draft report was handed to the previous Associate Minister for the Environment in October 2018.[6]

Since then, the development process has been supported by officials at the Ministry for the Environment and has included:

- consideration of why the proposed national direction is consistent with the purpose of the RMA
- public consultation and the provision of opportunities for written submissions on a proposed NPSIB and associated discussion document and further targeted consultation on an exposure draft
- the development of a report and recommendations from officials to the Minister in response to the submissions and the subject matter of the national direction (this report).

An evaluation report of the proposed NPSIB is required by section 52(1)(c) of the RMA and must be prepared in accordance with section 32 of the RMA. This 'section 32 report' considers whether the proposed national direction is consistent with the purpose of the RMA and if the proposal is the most appropriate way to achieve the objectives or if there are other practicable options.[7]

The Associate Minister for the Environment (Biodiversity) must consider this recommendations report before making changes to the NPSIB, making no changes, or withdrawing all or part of the proposed NPSIB. The Associate Minister for the Environment (Biodiversity) must then have particular regard to the section 32 report (per section 52(1)(c) of the RMA), when deciding whether to recommend that the Governor-General approve the NPSIB under section 52(2).

3 Overview of the consultation and submissions process

The Ministry for the Environment, with the support of officials from the Department of Conservation (DOC), undertook public consultation on the proposed NPSIB between

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6 Biodiversity Collaborative Group. 2018. *Report of the Biodiversity Collaborative Group*. Wellington: Biodiversity (Land and Freshwater) Stakeholder Trust.

7 Ministry for the Environment. 2023. *National Policy Statement for Indigenous Biodiversity Evaluation Report under Section 32 of the Resource Management Act 1991*. Wellington: Ministry for the Environment.

26 November 2019 and 14 March 2020. During this period, targeted stakeholder meetings, council engagement and hui with the Treaty of Waitangi/Te Tiriti o Waitangi partners were held and written submissions from the public were sought.

We received 7,305 submissions on the proposed NPSIB. Of these, 6,575 (or 90 per cent) were classified as 'form' submissions that individuals completed using a submission template from Forest and Bird, and 730 (or 10 per cent) were classified as 'unique' submissions, of which 184 were made using an online submission form and 546 were emailed or written and posted submissions. Submissions came from a wide variety of groups, including local authorities, iwi/Māori, industry and professional groups, individuals and landowners.

Submissions received on the proposed NPSIB were largely in support of the intent of the proposal. More submissions were received supporting the proposed NPSIB (in full or in part) than there were opposing it (in full or in part). General reasons for submitters supporting the proposed NPSIB included that it will:

- help address the decline of indigenous biodiversity in Aotearoa New Zealand, which is urgently needed
- clarify council responsibilities for implementing section 6(c) of the RMA requiring the maintenance of indigenous biodiversity
- have the potential to increase the ability of Māori to exercise their rights as kaitiaki.

General reasons for submitters opposing the proposed NPSIB included:

- that there are risks of unintended consequences or perverse outcomes for indigenous biodiversity
- that it may unduly prevent forestry, farming and the provision of infrastructure and energy activities
- that it will be too resource intensive and costly to implement and does not allow for regional variations in biodiversity, management approaches and council resources
- concerns about the process of engagement with Māori during its development and the impacts of implementation on Māori land
- that it may breach private property rights
- the requirement for restoration as well as protection is beyond the purpose of the RMA outlined for regional councils, and protection should be prioritised.

Several more general themes were also raised by submitters, including:

- whether the management of indigenous biodiversity should take regulatory or non-regulatory approaches
- that guidance and funding are critical to support NPSIB implementation
- the importance of considering integrated management and how the NPSIB will interact with national directions and other Acts relating to environmental management.

More detail on the submissions received can be found in the full summary of submissions.[8]

[8] Ministry for the Environment and Department of Conservation. 2020. *He Kura Koiora i hokia | A proposed National Policy Statement on Indigenous Biodiversity – Summary of submissions.* Wellington: Ministry for the Environment.

We had further consultation on the proposed NPSIB (outside the public consultation that occurred in 2019–2020). There were also hui with iwi/Māori in early 2019 and again in early 2020, as well as hui to specifically discuss geothermal provisions in late 2021.

In June 2022, an exposure draft NPSIB was released for public submissions over a period of six weeks. We sought feedback specifically on the workability of the provisions, rather than policy intent. Targeted consultation with groups that had particular interest in the NPSIB or were highly familiar with the issues was also sought. Information sessions were held as part of this consultation with stakeholders, Māori, industry, non-government organisations and council groups. We received 287 substantive submissions and 3,210 form submissions from supporters of Groundswell NZ on the exposure draft. As a result of this process, we are recommending some further changes beyond those already suggested through the 2019–2020 public consultation.

Part B

The following sections outline recommended changes to policy. Some recommendations involve broad changes, and others suggest changes to the intent or simply specify changes to the wording. These differences reflect the technical nature of some provisions and the different levels of feedback in submissions received on each policy area.

For each issue, this report gives:

- an overview of what was consulted on
- key policy issues from submissions
- analysis
- recommendations.

1 Scope, objectives and policies

Scope

Proposal consulted on

The scope of the proposed National Policy Statement for Indigenous Biodiversity (NPSIB) was largely restricted to terrestrial biodiversity. The Biodiversity Collaborative Group (BCG) recommended agencies and relevant experts develop policy on controlling adverse effects on marine significant natural areas (SNAs), and identifying and managing freshwater SNAs. However, given other national direction contains provisions for protecting aquatic biodiversity, we decided to refine the terrestrial and wetland provisions in the proposed NPSIB but to not proceed with developing freshwater and marine aspects.

Key issues from submissions

- The national policy statement (NPS) should include freshwater and marine environments to give more cohesive, integrated management of the environment and promote clarity of regulation. The use of terrestrial, freshwater and marine 'domains' was also seen as being at odds with te ao Māori.
- There are gaps in national direction instruments – for example, through excluding wetlands from most of the NPSIB (apart from restoration).
- Conversely, extending the scope could create regulatory overlap (especially with other national direction) or make it difficult to manage adverse effects in aquatic environments.

Analysis

We agree it is important to identify and understand the consequences of any gaps between the NPSIB and the National Policy Statement for Freshwater Management (NPS-FM).[9] These

[9] Ministry for the Environment. 2023. National Policy Statement for Freshwater Management 2020. Wellington: Ministry for the Environment.

are most likely to occur at the land/water interface, for example the banks of rivers and lakes, braided river islands and terrestrial wetlands. Where complexity cannot be avoided, we think it preferable to tolerate some overlap rather than create a gap. Overlaps can generally be resolved by applying legal principles of interpretation, whereas it is challenging to 'read in' to cover a gap.

An option we considered is to reverse the 'terrestrial presumption' inherent in the current drafting. Instead, the NPSIB would apply to all indigenous biodiversity, except (for example) marine and freshwater SNAs. However, although this may look elegant, there are areas of the NPSIB where including aquatic biodiversity would be problematic – for example, in managing taonga[10] species and highly mobile aquatic fauna, in the implications for monitoring and assessments of environmental effects and general rules applying outside SNAs.

For the exposure draft, we used the concept of 'aquatic biodiversity' to distinguish between terrestrial and freshwater/marine scope. However, submitters did not find this more helpful and suggested a spatial concept would be more in keeping with other national directions. We therefore recommend the use of the term 'terrestrial environment', which is already defined. It means land covered by water, water bodies, freshwater ecosystems and the coastal marine area is not within scope of the NPSIB (unless otherwise stated, such as for regional biodiversity strategies (RBSs)).

Several submitters pointed to the importance of wetlands for indigenous biodiversity and ecosystem services. This is reflected in other national direction, in particular Policy 6 of the NPS-FM and rules in the National Environmental Standards for Freshwater (NES-F).[11] From an ecological perspective, it is not ideal to have the management of wetland/terrestrial sequences occurring under different instruments. On the other hand, we cannot ignore a regime is already in place for wetlands. The NPSIB does not require wetland SNAs to be identified, but many councils have already done this.

The potential for adverse effects on wetlands are managed by national directions for freshwater. At the same time, it is important the NPSIB and NPS-FM work well together. Widening the overall scope of the NPSIB to wetlands would result in two effects management regimes operating, which would be inefficient for councils and landowners. Therefore, we have concentrated on the situation for SNAs. We recommend areas of terrestrial wetland in an SNA are treated as part of the SNA. To avoid confusion on which management regime would prevail, we recommend this be the NPS-FM and NES-F (as these are more specific to wetland issues).

We recognise there are areas of geographical overlap where other national direction instruments apply as well as the NPSIB, such as:

- the terrestrial coastal environment (NPSIB and the New Zealand Coastal Policy Statement (NZCPS)[12])
- terrestrial wetlands (NPSIB and NPS-FM).

The NPSIB and NPS-FM should be monitored during implementation for any problem areas. Biodiversity existing at the interface between the freshwater and terrestrial domains

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[10] Where the term 'taonga' is used, it means 'taonga species and ecosystems'.

[11] Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

[12] Department of Conservation. 2010. *New Zealand Coastal Policy Statement*. Wellington: Department of Conservation.

(for example riparian margins and braided riverbeds) is one area to watch. The definition of terrestrial environment is designed to work seamlessly with the definitions of water, waterbodies and freshwater ecosystems in the NPS-FM. Should practical experience reveal this is not the case (and the issues cannot be addressed through guidance), we will seek to amend the national direction instrument(s).

We agree the NPSIB should ideally be 'domain neutral' and take an integrated approach to managing indigenous biodiversity. Biodiversity does not recognise the 'environmental domain' approach. The Natural and Built Environment Bill (NBE Bill) will require significant biodiversity areas to be identified across marine, freshwater and terrestrial environments. A rationalisation of national direction will be needed as part of resource management reform. This will provide an opportunity to manage biodiversity 'ki uta ki tai' at a whole-of-landscape/seascape scale.

This will also help achieve several ecosystem goals in Te Mana o te Taiao | Aotearoa New Zealand Biodiversity Strategy (ANZBS),[13] such as Goal 10.4.1, which requires significant progress in identifying, mapping and protecting coastal ecosystems.

Subclause 1.7(3) of the proposed NPSIB details what the maintenance of indigenous biodiversity entails. Submitters noted that it read like a requirement that must be complied with, which meant concern about how baselines will be determined and the scale of application. Other issues raised were around the definitions of the technical terms. We recommend drafting changes are made to clarify that the intent of this clause is to outline what is meant by maintaining indigenous biodiversity, given this is at the core of the NPSIB. We also recommend changes to the text to improve clarity and workability.

Objectives and policies

Proposal consulted on

Clause 2.1 of the proposed NPSIB contains six objectives of varying levels of specificity. Objectives state what is aimed for in resolving a particular issue. They tend to be positively worded and should provide clear targets that will be achieved through the policies. In asking 'What are we trying to achieve?', the objectives reflect the desired endpoint and contribution the NPSIB is to make.

Clause 2.2 sets out 15 policies the proposed NPSIB intended to achieve. Policies outline the courses of action to be taken to achieve or implement the objectives (that is, the paths to be followed to achieve the environmental outcomes). Their purpose is to support and expand on the objectives by setting the directions or actions required by users of the NPSIB. The policies broadly describe the implementation requirements.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were as follows.

- Submitters agreed with the objectives, up to a point.
- Many submitters thought the objectives were well linked to intended outcomes and provided certainty to councils on what is required.

[13] Department of Conservation. 2020. *Te Mana O Te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020*. Wellington: Department of Conservation.

- Some submitters thought the objectives should be stronger in addressing Māori interests or be more future focused and aspirational.
- There were a range of views on the drafting of the objective focused on maintaining indigenous biodiversity – particularly that it was too open-ended or potentially all-encompassing.
- Several alternative suggestions were made, including combining maintenance and restoration and enhancement objectives.

Policies need to relate to the relevant clauses

The discussion document did not directly ask for views on the policies in the proposed NPSIB. However, some submitters commented on these, seeking the removal, amendment or addition of policies.

Analysis

Objectives 1 and 5

Objective 1 of the proposed NPSIB was sometimes referred to as the primary objective (maintenance). However, although it provided a link to the purpose and matter of national significance clauses, there was no ranking of the proposed objectives. On the face of it, no objective is more important than any other. One objective is preferable.

We agree there is potential confusion arising from the plain meaning of 'maintain' not covering the range of actions required by the RMA for biodiversity. Decision-makers must 'protect' significant biodiversity, 'safeguard' the life-supporting capacity of ecosystems and 'have particular regard to' the intrinsic values of ecosystems. We recommend making this clear by referring in the objective to the fact that 'maintain' covers protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity.

The NPSIB sets out how the maintenance of indigenous biodiversity can be achieved across Aotearoa at a national level. It requires the protection of SNAs and managing effects on indigenous biodiversity outside SNAs. It allows for some losses arising from activities needed to provide for social, economic and cultural wellbeing, but minimises these through use of the effects management hierarchy or other management approaches. The appropriate use of offsetting and compensation, along with proactive measures such as restoration, will mean there is no overall reduction in or loss of indigenous biodiversity.

For this reason, we recommend that the previous objectives be amalgamated into one objective, but that this reflect the previous objectives, and that Objective 1 should be more explicit. We agree with submitter suggestions for wording to the effect of 'to maintain indigenous biodiversity means at least no overall loss'. This constitutes a more aspirational objective, as sought by other submitters, and aligns with the Randerson report on the RMA.[14] It also removes the perceived conflict/overlap between Objectives 1 and 5.

[14] Resource Management Review Panel. 2020. *New Directions for Resource Management in New Zealand. Report of the Resource Management Review Panel*. Report prepared for the Ministry for the Environment.

Objectives 2 and 3

Several submitters made specific drafting recommendations relating to Objectives 2 and 3 in the proposed NPSIB, encompassing the principles or articles of the Treaty of Waitangi/Te Tiriti o Waitangi and the role of tangata whenua as kaitiaki, and providing for tangata whenua involvement or co-governance in managing indigenous biodiversity. In their view, this would show Crown legislation acknowledges the Treaty of Waitangi/Te Tiriti o Waitangi , and the NPSIB actively honours and implements it.

The role of tangata whenua as kaitiaki is important and should retain strong links with the objective of the proposed NPSIB. We recommend it be incorporated. Section 8 of the RMA requires all persons exercising functions and powers under it to take into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi. Although it is not necessary for this to be said in the NPSIB, it is a significant matter for many submitters, particularly tangata whenua. We recommend it remains reflected in the policies, and that it is included in the new decision-making principles to inform the NPSIB implementation. This will ensure this obligation is front of mind for decision-makers when implementing the NPSIB.

Objective 3 refers to the concept of 'Hutia te Rito', which was included as a way to bring to te ao Māori and mātauranga and tikanga Māori into the management of indigenous biodiversity. Recommendations on this are addressed in section 2 of Part B, below.

Objective 4

Objective 4 is a specific objective expressed more fully in Policy 4. Therefore, we do not think the standalone objective of improving integrated management is needed, especially since the proposed NPSIB does not cover all environmental domains.

Objective 5

As noted above, we recommend amalgamating this into one objective that clarifies that the maintenance of indigenous biodiversity also covers restoration.

Objective 6

Objective 6 generated a large amount of feedback from submitters, who had a range of views. There was concern kaitiakitanga and stewardship were not properly distinguishable from each other, it did not relate well to other parts of the proposed NPSIB, and the absence of environmental bottom lines could allow economic wellbeing to be prioritised. Having one primary objective and clearly linking kaitiakitanga to tangata whenua would address these concerns.

We consider that providing for the social, economic and cultural wellbeing of people and communities is an integral part of how this NPSIB aims to achieve the maintenance of indigenous biodiversity. How this is to be done is set out in the policies and implementation provisions. We recommend this be included in the one primary objective.

Policies

The proposed NPSIB contains 15 policies, which together form the context and direction for the more specific implementation requirements which follow. Most of the policies did not attract significant comment, and we recommend they be retained. However, we have

recommended some revision of Policy 1 on the Treaty of Waitangi/Te Tiriti o Waitangi, and of Policy 2 on kaitiakitanga.

We recommend changes to ensure they provide a more suitable framework for the changes made following discussions with iwi leaders. Policy 1 no longer refers to Hutia te Rito – instead referring to the decision-making principles. Policy 2 adds an element to facilitate kaitiakitanga – namely, the ability to participate actively in decisions about indigenous biodiversity. Other changes, including amendments and the addition of policies (for plantation forestry and activities that contribute to social, economic and cultural wellbeing), have been recommended to the wording of policies to reflect the changes to the clauses they direct. These are discussed in further detail in the relevant sections below.

Recommendations and decisions

Recommendations for scope, objectives and policies

1a) Amend the language around wetlands to clarify they are in scope of the NPSIB, and that the NPS-FM provisions prevail in the event of a conflict.

1b) Amend clause 1.7(3) 'Maintenance of indigenous biodiversity' to make clear the intent and amend as needed to provide clarity and improve workability.

1c) Amalgamate the objectives into one objective that describes the main goal of the NPSIB (to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss after the commencement date). This objective would be supported by the role of tangata whenua as kaitiaki, and people and communities, including landowners, as stewards. It would also include recognising that protection and restoration are needed to achieve the overall maintenance of indigenous biodiversity. It would also recognise that this is to be achieved while providing for the social, economic and cultural wellbeing of people and communities, now and in the future.

1d) Amend the policies to form the basis of the changes made to the implementation requirements.

Minister's decision

Agree

Recognising te ao Māori and the principles of The Treaty of Waitangi/Te Tiriti o Waitangi, and engaging with tangata whenua

2 Decision-making principles

Proposal consulted on

Hutia te Rito was a concept included in the exposure draft of the NPSIB to recognise the reciprocity between indigenous biodiversity and people and acknowledge and incorporate te ao Māori and mātauranga and tikanga Māori in the management of indigenous biodiversity.

Hutia te Rito was set out and described in subclause 1.7(1) of the proposed NPSIB, and Objective 3 and Policy 1 guided its application. Clause 3.2 set out what councils must do to recognise and provide for this concept, which included a requirement to recognise and provide for the interrelationships of te hauora o te tangata | the health of the people and:

- te hauora o te koiora | the health of indigenous biodiversity
- te hauora o te taonga | the health of taonga species and ecosystems
- te hauora o te taiao | the health of the wider environment.

Hutia te Rito also required local authorities to recognise the maintenance of indigenous biodiversity requires kaitiakitanga and stewardship. Local authorities needed to take steps to ensure indigenous biodiversity was maintained and enhanced for the health, enjoyment and use of all New Zealanders now and in the future.

Clause 3.3 required local authorities to collaborate with tangata whenua in developing objectives, policies and methods to provide for Hutia te Rito. RBSs were also required to recognise and provide for this concept.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were:

- doubt about the suitability of the whakataukī as the fundamental concept of the NPSIB because:
  - its meaning related to the importance of whānau and generational connections, not biodiversity
  - some considered it to be misappropriated
  - there was uncertainty whether the concept expresses a balance between people and the environment and, if so, whether that balance is appropriate for the NPSIB

- the uncertain meaning of this concept, and the related uncertain meaning of provisions in the proposed NPSIB that give effect to it, including the use of Māori words and uncertain English terms
- there is a lack of clarity in how local authorities should give effect to it
- it is unclear whether the concept has been sufficiently applied to the provisions of the proposed NPSIB.

Analysis

Most submitters supported use of the concept of Hutia te Rito because they considered it expresses the relationship between people and nature or allows for the expression of te ao Māori, rangatiratanga and the principles of The Treaty of Waitangi/Te Tiriti o Waitangi. Iwi/Māori were fairly evenly divided.

Suitability of the whakataukī and uncertain meaning

Hutia te Rito was included by the BCG in the NPSIB as a way of:

- promoting and protecting the maintenance of indigenous biodiversity, its intrinsic value and mauri
- reflecting The Treaty of Waitangi/Te Tiriti o Waitangi and its principles by providing for greater involvement for iwi/Māori as kaitiaki in council activities that plan for, protect and manage indigenous biodiversity processes
- transitioning to a system that acknowledges and incorporates te ao Māori, and mātauranga and tikanga Māori
- reflecting Wai 262 recommendations.[15]

Some submitters expressed the view the whakataukī is inappropriate for the NPSIB because it is not about biodiversity; it is about the importance of whānau and generational connections. A few submitters pointed out that, historically, the whakataukī was about the sanctity of human life rather than nature, and others considered it was misappropriated for use in the NPSIB.

The Iwi Leaders Group Pou Taiao (Iwi Leaders Technicians) were concerned they had not had a sufficient role in the development of Hutia te Rito within the NPSIB. Their view was that it was not necessary for every instrument of national direction to have a specific concept, because once the NPSIB transitions to the National Planning Framework (NPF) under the NBE Bill, Te Oranga o te Taiao will apply. They requested the removal of Hutia te Rito from the NPSIB. We therefore recommend its removal from the NPSIB.

The exposure draft responded to submissions on the meaning of the concept by including six essential elements intended to clarify this intent. During the exposure draft process, we worked with Iwi Leaders Technicians to clarify and strengthen these elements. We recommend these be retained, with some additions (as outlined below), and renamed as principles rather than elements.

- Prioritise the mauri, intrinsic value and wellbeing of indigenous biodiversity.

[15] Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity (Wai 262)*. Wellington: Waitangi Tribunal.

- Take into account the principles of The Treaty of Waitangi/Te Tiriti o Waitangi.
- Recognise the bond between tangata whenua and indigenous biodiversity based on whakapapa relationships.
- Recognise the obligation and responsibility of care that tangata whenua have as kaitiaki of indigenous biodiversity.
- Recognise the role of people, landowners, managers and communities as stewards of indigenous biodiversity.
- Enable the application of te ao Māori and mātauranga Māori.
- Form strong and effective partnerships with tangata whenua.

These principles embody the intent behind including Hutia te Rito in the NPSIB and stand as strong principles to inform councils, tangata whenua and communities in decision-making on indigenous biodiversity.

We recommend related amendments to the role of the decision-making principles. The previous requirements in clause 3.2 of the proposed NPSIB about how councils must recognise and provide for Hutia te Rito are no longer applicable. Instead, we recommend these principles be given effect at a local level through engagement between councils and tangata whenua and communities.

Recommendations and decisions

Recommendations for the decision-making principles

2a) Remove Hutia te Rito from the NPSIB.

2b) Replace Hutia te Rito with decision-making principles to reflect the intent behind the incorporation of Hutia te Rito in the NPSIB.

2c) Consolidate the preamble text description of Hutia te Rito and reshape it so it applies to the decision-making principles.

2d) Apply a strong role for the decision-making principles in implementing the NPSIB by:

- amending clause 3.2 so it requires local authorities to engage with tangata whenua and communities to develop a local approach to giving effect to the decision-making principles
- including a policy to give effect to the decision-making principles.

Minister's decision

Agree

3 Providing for the principles of The Treaty of Waitangi /Te Tiriti o Waitangi and engaging with tangata whenua

Proposal consulted on

The NPSIB aims to provide clarity on how councils can meet RMA obligations related to The Treaty of Waitangi/Te Tiriti o Waitangi when making decisions about indigenous biodiversity. The proposed NPSIB emphasised the need to involve tangata whenua as kaitiaki in decisions and to incorporate mātauranga Māori and tikanga in the management of indigenous biodiversity. It required councils to engage early with tangata whenua and encouraged meaningful relationships to be built between tangata whenua and local authorities.

This was achieved through Objective 2 in the proposed NPSIB, which was to take into account The Treaty of Waitangi/Te Tiriti o Waitangi, and through Policy 1, which was to recognise the role of tangata whenua as kaitiaki of indigenous biodiversity in their rohe, providing for tangata whenua involvement in the management of indigenous biodiversity and ensuring Hutia Te Rito was recognised and provided for. Clause 3.3 required councils to work with tangata whenua when making or changing policy statements or plans, to incorporate mātauranga Māori as agreed by tangata whenua, and to enable tangata whenua to exercise kaitiakitanga and be involved in decision-making.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were:

- partnership and decision-making, including:
  - a lack of partnership and engagement in the design of the proposed NPSIB
  - inadequate requirements in the proposed NPSIB for partnership and decision-making for tangata whenua (including whether it meets the recommendations of the Wai 262 report)[16]
  - the roles of different groups, including Māori landowners, in engagement
- the relationship between landowners and kaitiaki
- the scope of customary use, including:
  - limits on use
  - if fauna should be included
  - its application to private land
  - appropriate recognition of mātauranga Māori and mahinga kai.

Analysis

Most submitters considered the proposed NPSIB appropriately accounted for the principles of The Treaty of Waitangi/Te Tiriti o Waitangi. However, some submitters considered it

[16] Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity (Wai 262)*. Wellington: Waitangi Tribunal.

had done too much. Other submitters thought it had not done enough – these included iwi/Māori in general, as outlined below.

Partnership and decision-making

Partnership and engagement in the design of the proposed NPSIB

Many iwi/Māori submitters did not consider the proposed NPSIB adequately accounted for the principles of The Treaty of Waitangi/Te Tiriti o Waitangi, believing the Crown had not developed the proposed NPSIB in partnership with them. They called for direct engagement with them as mana whenua because they have a significant interest in the protection of indigenous biodiversity and the proposed NPSIB affects their land, taonga in their rohe and their role as kaitiaki.

The process of developing the proposed NPSIB included significant engagement with and input from tangata whenua. However, the process may not have met the aspirations of some iwi/Māori submitters for partnership or co-design. We have described the process used by the BCG to develop a draft NPSIB in section 3 of Part A, above. The BCG included a representative of the Iwi Chairs Forum through the Pou Taiao Iwi Leaders Group (Iwi Leaders Technicians).[17]

The draft NPSIB was informed by a report prepared by Te Kahu o te Taiao, the mātauranga Māori rōpū of the Iwi Chairs Forum. All members of Te Kahu o te Taiao were nominated to be members of the rōpū by their iwi authorities, and they represented a range of iwi spanning the North and South Islands.[18]

The BCG engaged with iwi/Māori at hui during the development of its final report, which was delivered to the previous Associate Minister for the Environment, Hon Nanaia Mahuta, in October 2018. The joint Ministry and DOC project team then worked to refine the BCG's draft NPSIB. Two further rounds of nationwide regional hui were carried out, one by DOC in 2019 and one by the Ministry in early 2020 during the consultation period for the proposed NPSIB.

Further targeted hui took place post-consultation with iwi/Māori on geothermal ecosystem management in the scope of the proposed NPSIB. This level of engagement and involvement resulted in significant input to the proposed NPSIB, and relevant provisions were integrated throughout. These included:

- a fundamental concept that reflects te ao Māori
- objectives for and policies on the principles of The Treaty of Waitangi/Te Tiriti o Waitangi
- a strong recognition of kaitiaki roles and responsibilities
- the identification of taonga species

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[17] In 2017 the Freshwater Iwi Leaders Group (ILG) was amalgamated with all other natural resource ILGs to form the Pou Taiao ILG (Iwi Leaders Technicians). The kaupapa in the Pou Taiao ILG included climate change, freshwater, conservation, biodiversity, biosecurity, oil and minerals, and Te Kahu o te Taiao (mātauranga Māori in relation to te taiao). The Pou Taiao ILG was supported in their engagement by a team of iwi and technical advisors, and their engagement with the Crown occurred at two levels: at a leadership/governance level between the members of the Pou Taiao ILG and senior Ministers of the Crown; and at a technical level between the members of the Pou Taiao ILG, technical advisors and Crown officials.

[18] The members were from the following iwi: Ngāti Porou, Rongowhakaata, Ngāti Kahungunu, Waikato-Tainui, Ngāi Tahu, Ngāti Tūwharetoa, Ngāti Maru, Ngāti Rangi, Ngāti Awa and Ngāti Porou.

- recognition of mātauranga Māori
- provision for Māori lands
- obligations on councils to work with tangata whenua and provide decision-making opportunities.

When we released the exposure draft NPSIB for public submissions in mid-2022, we contacted all iwi/Māori who submitted on the proposed NPSIB, and other key Māori organisations, requesting feedback. There were online hui with iwi/Māori during this time.

During the exposure draft process, we worked with Iwi Leaders Technicians on the draft NPSIB to consolidate changes to meet the principles of The Treaty of Waitangi/Te Tiriti o Waitangi.

Many of the changes we recommend strengthen the NPSIB in this regard. Examples of these recommendations are:

- recognition of tangata whenua as partners
- stronger and clearer obligations for councils to engage with tangata whenua
- stronger provisions to enable tangata whenua as decision-makers for indigenous biodiversity
- a stronger role for tangata whenua in the management of identified taonga
- an extended scope for customary use
- more enabling provisions for use and development on Māori lands.

Requirements in the proposed NPSIB for partnership and decision-making by tangata whenua

Some iwi/Māori submitters also considered the design of the proposed NPSIB did not provide adequately for a partnership and decision-making role for tangata whenua. They considered the obligations on local authorities to engage with tangata whenua were weak and not sufficiently specific.

They sought a clear direction in the NPSIB for councils to work with mana whenua as Treaty partners, with shared decision-making. Some referred to phrases used in the proposed NPSIB such as ‘involving’, ‘consultation’, ‘taking all reasonable steps’ and ‘providing opportunities’ as being inadequate and failing to recognise their rangatiratanga. A few suggested the NPSIB provisions should spell out more clearly the specific requirements for partnership or engagement by local authorities and the specific mechanisms that could or should be used, such as the transfer of powers under section 33 of the RMA. A few sought the inclusion of more opportunities for independent decision-making by tangata whenua, and some emphasised the need for resourcing to enable this to occur.

Obligations on local authorities to involve tangata whenua are guided by Policy 2, which is to recognise the role of tangata whenua as kaitiaki of indigenous biodiversity in their rohe and to provide for tangata whenua involvement in the management of indigenous biodiversity. This is primarily operationalised under clause 3.3 ‘Tangata whenua as kaitiaki’ of the proposed NPSIB but is also included in clause 3.14 ‘Identified taonga’ and clause 3.18 ‘Regional biodiversity strategies’.

Clause 3.3 set out the overall direction embodying the intent of the NPSIB for a greater involvement of and decision-making by tangata whenua in the management of indigenous

biodiversity. This recognises the responsibilities flowing from the role of kaitiaki. It requires local authorities to involve tangata whenua in early and meaningful consultation and to take reasonable steps to give opportunities to tangata whenua to be involved in decision-making. The intent of this provision is that it applies across the NPSIB.

Clause 3.14 of the proposed NPSIB set out more specific obligations for local authorities to work with tangata whenua in processes for the identification of taonga species. Clause 3.18 governed the requirements to work with tangata whenua (and others) on the development of RBSs.

These requirements derive from the principles of The Treaty of Waitangi/Te Tiriti o Waitangi and the obligations in respect to these principles set out in section 8 of the RMA, along with the responsibilities set out in sections 6 and 7 of that Act.[19]

The Wai 262 report examines the need for changes to the laws that manage the biodiversity and conservation of the environment to address the rights to and control of Māori knowledge, customs and relationships with the environment. The recommendations explain that the interests of kaitiaki are to be balanced with other legitimate interests to ensure:

- control by Māori of the environmental management of taonga, where it is found the kaitiaki interest should be given priority
- partnership models for environmental management of taonga, where it is found that kaitiaki should have a say in decision-making, but other voices should also be heard
- that effective influence and appropriate priority is given to the kaitiaki interests in all areas of environmental management when the decisions are made by others.

In reaching this conclusion, the Tribunal recognised there are circumstances where Māori control of taonga cannot and should not occur. Although the kaitiaki interest is important, it does not apply in every instance to override all other interests.

The provisions for local authority engagement with tangata whenua and decision-making should be strengthened and tangata whenua recognised as partners. We recommend the role of tangata whenua as partners be recognised throughout the NPSIB and specifically in clause 3, which addresses how councils and tangata whenua can partner for the management of indigenous biodiversity under this policy statement.

A partnership approach is consistent with the RMA requirement for councils to take into account the principles of The Treaty of Waitangi/Te Tiriti o Waitangi, including the principle of partnership. This means a positive duty to act in good faith, fairly, reasonably and honourably towards each other.

This approach articulates the existing intent in clause 3.3, which addresses how councils can meet RMA obligations relating to The Treaty of Waitangi/Te Tiriti o Waitangi when making decisions about indigenous biodiversity – for example through having a greater role in

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[19] Section 6(c) of the RMA requires that all persons exercising powers and functions under the RMA recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

Section 7(a) of the RMA requires that all persons exercising powers and functions under the RMA have particular regard to kaitiakitanga.

Section 8 of the RMA requires that all persons exercising powers and functions under the RMA take into account the principles of the Te Tiriti o Waitangi/The Treaty of Waitangi.

management and decision-making for indigenous biodiversity, a provision for mātauranga Māori and tikanga Māori and a provision for customary use. We understand many councils are already using a partnership approach with tangata whenua in developing their plans.

We also recommend clause 3.3 give more detail on the types of processes in which councils will partner with tangata whenua. This will provide certainty and clarity, but it is not intended to be an exhaustive list.

Some iwi/Māori submitters were concerned about the uncertain phrases in clause 3.3, particularly those such as 'take all reasonable steps' and 'as far as practicable'. They considered these phrases would enable local authorities to evade specified obligations. The intention in including such phrases was to ensure the obligations were workable for tangata whenua. These phrases were included because at hui we heard concerns from tangata whenua that:

- their resources and time were stretched, and they might not be able to provide input
- in some circumstances, they wanted a choice on whether to provide relevant input
- local authorities should be able to demonstrate and document action for engagement to ensure local authority engagement with tangata whenua is progressed.

We recommend these phrases are removed and the obligations strengthened or reframed, to make it clear the obligations apply to councils to the extent tangata whenua wish to be involved. This will reduce uncertainty.

The Wai 262 report also drew conclusions on barriers to the incorporation of mātauranga and tikanga Māori in legislation and to effective and meaningful engagement. Some of these recommendations cannot be addressed in the NPSIB, as they apply to other legislation and governance systems. The NPSIB must be crafted according to the scope of the overarching RMA framework. For example, the RMA gives functions for managing indigenous biodiversity to local authorities. It was intended that the proposed NPSIB would be informed by the intent of the Wai 262 report, in directing councils to take all reasonable steps to incorporate mātauranga Māori relating to indigenous biodiversity. As noted, submitters were concerned about the lack of certainty in the phrase 'take all reasonable steps'. In providing more certain language we are mindful of the fact that it is up to tangata whenua to use mātauranga Māori, not councils. Therefore, we do not recommend a direct requirement for councils to use mātauranga Māori but rather a requirement for councils to enable its use.

An NPS cannot require local authorities to transfer the functions of or decision-making on resource consents and planning provisions, but it can encourage this. It can also encourage local authorities to involve tangata whenua in the management of indigenous biodiversity. It can also be addressed in guidance, but guidance does not have any legal force. The strongest mechanism is to include it in the NPSIB.

Specific requirements for local authorities to work with tangata whenua and consider using RMA mechanisms, such as section 33 'Transfer of powers', section 36B 'Power to make joint management agreements', and Mana Whakahono ā Rohe | Iwi Participation Arrangements will give strong direction that we expect them to be used. We heard from tangata whenua they were concerned the engagement initiatives of local authorities were often not sufficiently pursued. A requirement to document and report on decisions on the use of mechanisms to involve tangata whenua in the management of indigenous biodiversity would ensure these are sincerely progressed.

Relationship between landowners and kaitiaki and the role of different groups, including Māori landowners, in engagement

Submitters expressed diverse views on the relationship between kaitiaki and landowners. Iwi/Māori submitters considered the proposed NPSIB failed to recognise the importance of Māori landowners and their ability to be kaitiaki. Some iwi/Māori submitters expressed the view their role as landowners could not be separated from their role as kaitiaki.

We acknowledge Māori landowners are kaitiaki of their land. The responsibilities and obligations of kaitiaki apply at a general level to iwi and hapū. The following definitions are given to the terms tangata whenua and kaitiakitanga in the RMA:

- **Tangata whenua**, in relation to a particular area, means the iwi, or hapū, that holds mana whenua in that area.
- **Kaitiakitanga** means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.

We consider the kaitiaki role rests appropriately with tangata whenua as defined in the RMA. Partnership and engagement requirements in the NPSIB should be between tangata whenua (as kaitiaki) and local authorities. As noted above, this includes iwi and hapū.

During engagement with Iwi Leaders Technicians, they emphasised tangata whenua are more than kaitiaki, and this is reflected in our recommendation for a partnership approach. Other submitters considered landowners, communities and tangata whenua are all kaitiaki, or non-Māori landowners should be recognised as kaitiaki of their land. Kaitiakitanga is a te ao Māori concept and flows through whakapapa to tangata whenua. Landowners have strong ties to the land and a sense of responsibility to care for the land for future generations, but this is expressed in the RMA through the term 'stewardship', not 'kaitiakitanga'. The Environment Court has confirmed the following explanation of these concepts:[20]

> Kaitiakitanga and stewardship stem from two completely different cultures and belief/value systems and while both may endorse the ethos of caring for the environment, that on its own does not mean they both can be conflated together;
>
> The fundamental component of kaitiakitanga is whakapapa. It is whakapapa that links individual kin to each other, to a specific location, resources, ngā Atua, as well as the dearly departed;
>
> Kaitiakitanga is not a birth right but a birth obligation that is inherited from generations past and passed down in perpetuity. The obligation can be impacted (but not extinguished) by land loss, whether by confiscation or sale. It can also be restored by acquisition of more land within the kin group rohe. It is not transient and cannot be imposed outside the rohe;
>
> Another aspect of kaitiakitanga is that it incorporates communication between the ever present dead, the environment, the living, and usually the relevant matter/s at hand;
>
> My understanding of stewardship is that it is mobile, not confined to any particular place, space, family or community. A person can be a steward of a piece of land anywhere in the country, provided they have some rights (ownership, lease etc) over it. However, kaitiaki can only exercise kaitiakitanga in their own rohe. Kaitiaki are part of the whenua with tupuna descending from the whenua itself...

[20] *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2019] NZEnvC 203 at [327].

The stewardship role of landowners was recognised in the social, economic and cultural wellbeing provisions of the proposed NPSIB, which referred to 'the importance of respecting and fostering the contribution of landowners as stewards and kaitiaki'. However, we consider, given the explanation above, the two concepts should remain separate. The New Zealand Law Society submission also considered the two concepts should be separated, stating, "As currently worded, this implies that all landowners can be both stewards and kaitiaki. The relationship of tangata whenua with the land does not depend on land ownership."

In section 9 of Part B, below, which relates to clause 3.7 of the proposed NPSIB, we also recommend the wording of that provision is changed so it distinguishes between tangata whenua as kaitiaki and landowners, people and communities as stewards. We note the inclusion of people and communities as recommended in that part of this report also.

Māori landholding entities made submissions seeking specific and clear recognition of Māori landholding entities (incorporations and trusts) so engagement can occur with them. Māori landowners will be involved in SNA identification through the principles outlined in subclause 3.8(2) 'Assessing areas that qualify as significant natural areas', and through iwi and hapū in relation to the identification and management of taonga. We do not propose any further changes. We do recommend owners of Māori lands be included as partners in developing planning provisions for their land.

A few other submitters sought specific recognition of hapū, not just iwi, as they considered hapū held the on-the-ground knowledge needed to ensure best practice sustainability models for natural resources and the environment. They wanted co-design and co-management of indigenous biodiversity planning provisions at a hapū level. We note the RMA definition of tangata whenua includes iwi and hapū, so there is no need to specify hapū are included. This can be further clarified in guidance. We also note section 35A of the RMA requires local authorities to record contact details for hapū in their areas and requires hapū to trigger this requirement by contacting relevant councils. As long as these requirements are met, local authorities will have the details necessary to involve hapū in planning processes.

We acknowledge concerns raised by some iwi/Māori submitters that local authorities often only consult or engage at the iwi level and hapū are often omitted. This issue was also raised relating to their involvement in processes for identified taonga. However, we also consider that decisions on who is involved, be they iwi or hapū, are better made at a local level. Therefore, to address this, we recommend the NPSIB make it clear local authorities should have regard to whānau, hapū and iwi decision-making structures when consulting and engaging.

Customary use

Application to fauna

Subclause 3.3(3)(c) of the proposed NPSIB directed local authorities to take reasonable steps to provide opportunities for tangata whenua to exercise kaitiakitanga over indigenous biodiversity, including measures such as allowing for the sustainable customary use of indigenous vegetation.

Most submitters on this issue (iwi/Māori and others) asked for this provision to be extended to fauna rather than being limited to indigenous vegetation. The points raised were that customary harvest of flora and fauna maintains tangata whenua connections with, and responsibilities for, biodiversity, and limiting this to indigenous vegetation constrains the full

exercising of kaitiakitanga. One submitter noted there was no such limitation in the BCG's recommendations. However, other submitters specifically said that customary use should not cover animals and the NPSIB should refer to the Wildlife Act 1953 (WLA) to make this clear.

Without customary use, the traditions and knowledge contributing to mātauranga Māori may be lost. These include the customary use of indigenous vegetation and fauna.

We agree the customary use of all forms of indigenous biodiversity is part of kaitiakitanga and the NPSIB should recognise that. The limitation to indigenous vegetation was originally applied as a reflection of the restrictions imposed by other legislation, such as the WLA. We recommend the limitation to indigenous vegetation be removed, so local authorities are required to enable opportunities for the sustainable customary use of indigenous biodiversity (including indigenous flora and fauna).

Most species of wildlife (including mammals, birds, reptiles and amphibians) are protected under the WLA. No one may kill or have in their possession any of these protected animals unless they have a permit. However, the WLA does not apply to all wildlife (for example, a small subset of native insects) and, although it protects most native birds absolutely, some (such as weka, pūkeko, tītī/muttonbird, grey duck and paradise shelduck) may be hunted under some conditions and circumstances.

To the extent the WLA applies, its provisions will prevail so that authority under the WLA will be required for most customary use of wildlife. Likewise, the Conservation Act 1987, Reserves Act 1977 and National Parks Act 1980 continue to apply in their respective areas to manage the use of flora and fauna.

To help councils craft appropriate provisions, guidance will be needed to ensure they understand the specific species that may be the subjects of customary use and the extent of control by the WLA or other legislation.

DOC is currently reviewing the WLA. One issue is the WLA does not meet contemporary needs for customary use. The NPSIB should be crafted so that it is able to respond to any changes should they occur.

We also recommend the reference to sustainable customary use of indigenous biodiversity stipulates it must be done in accordance with tikanga. This will ensure it is carried out using appropriate processes and with appropriate authority from within the relevant iwi with kaitiaki. It will address instances where others from outside the iwi seek to implement sustainable customary use.

Greater detail and limits

Some submitters asked for the meaning, extent and process of customary use to be clarified. Many asked for them to be explained in more detail in guidance, particularly in terms of the scale of such customary use, the difference between commercial and customary use, and how sustainability is determined and monitored. One council asked for a nationally agreed framework for sustainable customary use. More detail on what customary use constitutes and the processes involved can be provided in guidance at a general level. However, we consider iwi and hapū throughout the country will have different tikanga when it comes to customary use. This must be part of discussions at local levels.

Monitoring will be done according to monitoring plans drawn up between communities, councils and tangata whenua. We expect the monitoring to cover the cumulative effects of resource use to ensure sustainability.

Some submitters sought limits on customary use to ensure species were not adversely affected. Limits could include only allowing the use of non-threatened or healthy species where there is a net gain or an abundance. We consider the requirement for the use to be sustainable ensures customary use is managed, so the species/ecosystem is not adversely affected. In addition, kaitiakitanga involves the exercise of caring and showing responsibility for those living things being used or taken. Sustainability is fundamental to kaitiakitanga. We do not consider it necessary to specify other limits on customary use in the NPSIB at a general level if this is carried out by kaitiaki. However, when crafting provisions for this at a local level, it is open for councils and tangata whenua to together develop appropriate conditions depending on species and local use. Guidance on all aspects of customary use will also help with this.

Application to private land

Some submitters sought additional provisions to guide access to private land for customary use. Some were concerned the reference to customary use in the proposed NPSIB implies access is authorised. Some sought a restriction for customary use of public land. The proposed NPSIB does not authorise access to private land. It guides the management of environmental effects on indigenous biodiversity, but any access to private land for customary use can only be permitted by the landowner. Therefore, we do not recommend any changes to restrict or otherwise control access.

Procedures for landowners' involvement in the process of identifying opportunities for customary use (where these interests intersect with their land and other issues of how access may be enabled) can be addressed in guidance developed by tangata whenua and local authorities at a local level.

Integration with other parts of the proposed NPSIB

Clause 3.3(3)(c) of the proposed NPSIB gave an overarching requirement that applied to all local authorities across all provisions of the proposed NPSIB.

Clarification is needed on how the provisions for customary use interact with provisions for SNA management, identified taonga management and existing uses. We intend the obligation on local authorities to allow opportunities for customary use included in clause 3.3 to apply, whether it is located in an SNA or there are identified taonga species, and whether or not it is an ongoing or new activity in any particular location. We recommend this be made clear, as there is a need to provide for customary use to meet the principles of The Treaty of Waitangi/Te Tiriti o Waitangi and relevant RMA obligations.[21] Therefore, we recommend customary use is specifically provided for:

- as an exception to the requirement to avoid significant adverse ecological effects on SNAs
- as an exception to the requirement to apply the effects management hierarchy for other effects
- in the clause about identified taonga.

[21] Set out in sections 6, 7 and 8 of the RMA.

The effects of customary use are appropriately managed through requiring customary use to be sustainable. This aligns with the recommendation given in Part B, section 12 for an additional provision to be added for the sustainable customary use of indigenous biodiversity, in accordance with tikanga.

If sustainable customary use is already being carried out, rather than representing a new activity, sections 10 and 20A of the RMA will apply to enable it. Beyond that, it is likely to be enabled in an ongoing way by the clause enabling established activities, if it meets the requirements of that provision – that is, it will not lead to the loss of the extent or degradation of the ecological integrity of any SNA.

Recommendations and decisions

Recommendations on providing for the principles of The Treaty of Waitangi/Te Tiriti o Waitangi and engaging with tangata whenua

3a) Strengthen the references throughout the NPSIB so it is clear that tangata whenua are partners, and strengthen and clarify local authority obligations to engage with tangata whenua.

3b) Add more detail about the types of processes councils will be developing in partnership with tangata whenua, such as regional biodiversity strategies, determining taonga species and enabling mātauranga Māori at a local level.

3c) Require councils to enable the use of mātauranga Māori instead of taking all reasonable steps to incorporate mātauranga Māori.

3d) Remove uncertain wording.

3e) Strengthen the role of tangata whenua in decision-making, by specifying the RMA mechanisms to be used by local authorities to involve tangata whenua.

3f) Include specific obligations for local authorities to document the decisions they make on those RMA mechanisms.

3g) Distinguish between the roles of landowners, people and communities as stewards and tangata whenua as kaitiaki in provisions.

3h) Require local authorities to regard the different levels of whānau, hapū and iwi decision-making when involving tangata whenua or engaging with tangata whenua.

3i) Remove the limitation on sustainable customary use to indigenous vegetation, so local authorities are required to enable opportunities for sustainable customary use of indigenous biodiversity.

3j) Add the phrase ‘according to tikanga’ to sustainable customary use.

3k) Clarify that the obligation to enable opportunities for sustainable customary use applies whether it occurs in an SNA or identified taonga.

Minister’s decision

Agree

Identifying important biodiversity and taonga

4 SNA identification criteria

Proposal consulted on

SNAs represent the most highly valued indigenous biodiversity. Protecting these areas is fundamental to achieving the outcomes of the ANZBS.[22] Section 6(c) of the RMA also requires these areas to be protected as a matter of national importance. This proposal provides the system for that to occur. Many councils have identified, or are in the process of identifying, SNAs in their districts. However, there are variation in the comprehensiveness of this work and the criteria used.

In line with best practice, the proposed NPSIB set out four ecological criteria and accompanying attributes, which are mostly applied at the scale of the ecological district. This framework was developed from the work of the BCG. It builds on established practice by ecologists and councils around the country and is largely consistent with DOC's guidelines for assessing significant ecological values.[23]

- Representativeness – how typical or characteristic the area is in the context of the relevant ecological district.
- Diversity and pattern – the level of variation and changes along environmental gradients.
- Rarity and distinctiveness – scarcity and special features.
- Ecological context – size and shape within the wider landscape.

Each criterion is supported by a set of attributes. If one attribute is met under any one criterion, a site will be considered significant. The attributes were divided into 'High' and 'Medium' SNAs, as this split was originally proposed as part of managing adverse effects.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were as follows.

- Some criteria may be too broad or unclear as described, and could result in larger areas of farmland and plantation forest being considered significant than originally intended.
- The High/Medium split is confusing, and could result in most councils having to re-do their existing SNAs, potentially resulting in a 'downgrading' of Medium SNAs.
- The criteria fail to address Māori perspectives.
- There was concern about the cost to councils associated with identifying SNAs through a full SNA assessment on PCL.

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22 Department of Conservation. 2020. *Te Mana O Te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020*. Wellington: Department of Conservation.

23 Davis M, Head NJ, Myers SC, Moore SH. 2016. *Department of Conservation guidelines for assessing significant ecological values. Science for Conservation 327*. Wellington: Department of Conservation.

Analysis

Direction on approach

Several submitters who were opposed to the proposed criteria wanted them to be replaced by the original criteria developed by the BCG (including some members of the BCG). However, the criteria and attributes have not changed substantially from the BCG draft, apart from the recommended removal of the High/Medium split, and some explanatory material as being more suitable for guidance than as a regulatory document. Revisions were also made to clarify wording and meaning, but the essence of the criteria and their attributes remained.

Some submitters said the drafting was subjective and could result in inconsistent and inaccurate interpretation. We agree the criteria should be as clear as possible. However, there will always be an element of subjectivity associated with assessments. This is why qualified, experienced ecologists need to be involved in identifying SNAs. We also recommend comprehensive guidance be produced to help limit the variability in professional opinion.

Area of SNAs

There was a suggestion there should be a minimum size for an SNA. However, other submitters emphasised the importance of small sites, including as habitats for fauna such as invertebrates. Ecological values should not be defined by minimum areas, as that can result in perverse outcomes for habitats of limited size. Although large sites are important (for example, for mobile species with large home ranges), this does not mean smaller habitats have no relative value. Some threatened species have been reduced to very small habitats; for example, the critically threatened Chesterfield skink is confined to a very small strip of coastal habitat. Imposing arbitrary size limits on SNAs means the habitats of some threatened plants and animals would not be protected.

At the other end of the scale, some landowner submitters believed SNAs collectively would be too large, resulting in non-significant areas being caught by the criteria. For the exposure draft, we reviewed each criterion and made some changes (outlined below) to ensure they were suitably ‘tight’. Removing the High/Medium split also allowed some changes to the attributes.

Some concerns remained following the exposure draft, especially around threatened species which may be locally common. This is a difficult area, as species can be locally common but rare overall, and still require protection in what may be their last strongholds. However, it is also important the criteria are robust. We suggest an exception be made for common and widespread flora, with appropriate safeguards. The proposal is for areas of commonplace and widespread flora not to trigger an SNA by themselves, unless

- the species is rare within the region or ecological district of the site
- protecting the species at that location is important for its overall persistence.

This exception encompasses the specific provision for kānuka and mānuka, meaning that is no longer required as a separate item.

A similar issue arose for areas that might not contain indigenous vegetation but are still habitat for a widespread and ‘At Risk (Declining)’ species (for example, skinks in pasture). It is generally important for these areas to be identified. However, an area that is habitat for only one At-Risk (Declining) species is likely to be at the edges of significance. We therefore propose to exclude such areas from being SNAs unless either of the two factors listed above applies.

The next section discusses changes proposed under each criterion.

A. Representativeness

Several submitters were concerned the 'representativeness' criterion would be triggered by commonplace species so non-significant areas would become SNAs. Some of this concern was focused on the presence of scrub species, such as mānuka and matagouri. These species can be widespread in some areas despite having 'At Risk' status and thus attracting the 'rarity' criterion. That specific situation is addressed by the proposed 'commonplace flora' exception discussed above.

The original purpose and application of the criteria under the Protected Natural Areas Programme[24] were to identify best examples to set aside as reserves/protected areas throughout the country. But modern use under the RMA has departed from this to capture biodiversity characteristics of ecological districts. Ecosystems that are widespread and characteristic of an ecological district will only be included if they have ecological integrity (composition, structure and function) typical of what remains in that district. Consequently, 'representativeness' does not capture all sites because some have different compositions, structures and functions than are characteristic.

Other submitters supported including degraded ecosystems in depleted ecological districts. They believed protecting only a few discrete patches of the best or most representative examples would not maintain indigenous biodiversity. No commonplace ecosystems are left in some ecological districts (for example, the Low Canterbury Plains Ecological District),[25] so degraded ecosystems may be all that remain, making them extremely valuable. The attributes do not depend on long-term viability – otherwise, remaining ecosystems would go unrecognised and continue to decline in extent and integrity.

If the representativeness criterion focused only on a small number of 'best examples', SNAs would not be effective in achieving the objective of the proposed NPSIB to maintain indigenous biodiversity. Ensuring the protection of those characteristic ecosystems representing the remaining indigenous biodiversity of an ecological district is pivotal to maintaining indigenous biodiversity at a national scale.

For clarification, we recommend adjusting the description of representativeness to show it *can* rather than *must* capture commonplace vegetation. The degree is dependent on the context of the ecological district.

B. Diversity and pattern

Some submitters argued species 'diversity' is a redundant attribute, but others supported its inclusion. Still others noted confusion in what is meant by 'diversity'. For example, it is not stated that an *expected* diversity (for a vegetation/habitat type) is required to trigger significance.

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[24] For a useful summary, see: Bellingham P. 2001. Evaluating Methods for the Protected Natural Areas Programme. *Department of Conservation Science and Research Internal Report 190*. Wellington: Department of Conservation.

[25] McEwan WM. (ed.) 1957. *Ecological Regions and Districts of New Zealand*. Wellington: Department of Conservation.

The ‘diversity’ criterion was included in the BCG draft and appears in many regional and district plans throughout the country. It covers the extent of ecological diversity and pattern in the context of an ecological district. We agree the description could be further refined to refer to ‘moderate diversity’, referring to the ecosystem in the context of the ecological district in which it occurs. Protecting the diversity of species, vegetation, habitats and communities is essential to protecting biodiversity. It is, therefore, an essential means of achieving the objectives of the proposed NPSIB. As such, we recommend attribute B(5)(a) ‘diversity’ is replaced with ‘at least a moderate diversity’.

Some submitters noted complete or partial ‘ecotones’ (that is, regions of transition between biological communities) may occur anywhere, especially if ecotones do not need to be indigenous. The BCG draft included the qualifier of ‘important’ for ecotones triggering High-value SNAs, and the ‘presence’ of ecotones and partial sequences for Medium-value SNAs.

Complete sequences are very rare in depleted and fragmented lowland ecosystems. Therefore, the presence of partial gradients and sequences is important for maintaining biodiversity in these areas. We recommend clarifying the situation by adding ‘indigenous’ and removing ‘important’. Including gradients and sequences also helps to avoid legislative gaps, as protecting ecotones between terrestrial ecosystems and other domains rivers, lakes and coastal ecosystems occurs under different legislative tools.

C. Rarity and distinctiveness

Many submissions supported including a ‘rarity’ attribute. However, some were concerned the thresholds for ‘rarity’ were relatively low, meaning most vegetation that provides habitat for the many species classified as At Risk would be an SNA. They suggested the attribute be narrowed to habitats or species that are Endangered or Threatened or that size limits should be placed on habitats.

We do not agree with habitat size limits for the reasons outlined above. We considered whether there were ways of narrowing the attribute while still maintaining the integrity of the system. The At Risk classification consists of four subcategories: ‘Declining’, ‘Recovering’, ‘Relict’ and ‘Naturally Uncommon’. Species in the last three subcategories are not necessarily in decline. Further, if a species is also uncommon in the context of the ecological district, the site will be triggered as significant under attribute C6(b). This local context is an important safety net that could allow three At Risk categories to be removed from the habitat attribute C6(a). By narrowing the At Risk category to At Risk (Declining), around 2,166 species covering all life forms and all levels of taxonomic certainty would not trigger significance simply by their use of habitat (that is, where no other criteria are met). However, we believe the ‘Declining’ subcategory is still needed, as it indicates environmental pressure on those taxa. The combination of Threatened and At Risk (Declining) categories also aligns with those proposed in the earlier national policy work, *Protecting our Places*.[26]

We acknowledge the criteria stop short of providing protection for the habitats of ‘Data-Deficient’ species (those species to which conservation status cannot be assigned due to a lack of information). Some of these species are also likely to be Threatened or At Risk, but there is insufficient information to categorise them as such. Although the precautionary approach

[26] Ministry for the Environment, Department of Conservation. 2007. Protecting our Places: Information about the Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land. Wellington: Ministry for the Environment.

arguably favours the inclusion of Data-Deficient species, there is too much uncertainty to be able to include it in evidence-based regulatory requirements.

Attribute C6(d): 30 per cent of former extent

Some submitters were concerned about the potentially wide application of attribute C6(d). However, other submissions supported the 30 per cent threshold to ensure the viability of indigenous ecosystems at the ecological district level.

The BCG draft version of Appendix 1 to the NPSIB contained different thresholds – with one reference to 30 per cent remaining indigenous vegetation and another to 20 per cent. Published literature describes adverse effects on population persistence below about 30 per cent and one report stated that "… only the steepest, coldest, and highest of New Zealand's land environments now have more than 30% of their land area remaining under indigenous cover and more than 20% of their land area protected".[27] However, using 20 per cent remaining land environments is consistent with Priority 1 of the *Protecting our Places* report.

Setting the threshold at 'less than 20 per cent' would mean less land would potentially qualify as SNAs because indigenous vegetation in land environments that retain 20 to 30 per cent cover would no longer trigger significance on its own. The effect could be to remove the indigenous vegetation component across around 9.5 per cent of the country from qualifying as an SNA. However, the actual area would be less, as many of these areas are protected in other ways or would trigger other significance criteria.

We think reverting to 20 per cent is ecologically defensible. The application of 'rarity and representativeness' at the local (that is, ecological district) level provides a safeguard against setting this bar too low.

Attribute C6(g): type locality

Some submitters thought type locality (the site of first collection from which a species is formally described) is a cultural rather than an ecological value. However, other ecologists advised it is an important attribute that is scientific and essential for taxonomy and conservation.

If a type locality is part of an extensive site, it is likely to be significant based on other physically evident attributes. Although information on type localities is difficult to use, we believe it is preferable to retain this to maintain the scientific rigour of and benchmark for knowledge of specific characteristics of species, should it be needed.

D. Ecological context

Some submitters were concerned the 'ecological context' criterion would include almost all indigenous vegetation, including buffers with exotic species, and this criterion has subjective assessments. Other submitters supported the criterion.

'Ecological context' is a concept for evaluating the integrity of the habitat or ecosystems at site. This criterion (or variations of it) has been used by many councils throughout the country without leading to the 'capture of almost all indigenous vegetation'. Not all indigenous

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[27] Walker S, Lee W, Bellingham P, Kaine G, Richardson S, Greenhalgh S, Simcock R, Brown M. 2018. *Critical factors to maintain biodiversity: What effects must be avoided, remediated or mitigated to halt biodiversity loss?* Manaaki Whenua | Landcare Research Contract Report LC3116 prepared for the Biodiversity Collaborative Group. p 4.

vegetation has a buffering or connectivity role. Similarly, many sites do not meet the size and shape attributes to be considered significant or play a habitat role that could be described as 'important'. Being context dependent, this criterion will rely on expert ecological interpretation. (Small habitats that are 'typical' will be covered by the representativeness criterion.)

Buffering

Submitters were concerned these attributes would capture many areas of exotic vegetation and be too subjective. Some submissions recommended removing the qualifiers ('well', 'full', etc), arguing they are irrelevant to determining the importance of an area for maintaining indigenous biodiversity. Others wanted value placed on the function of the buffer to ensure it fulfilled an important role relative to the natural area or habitat.

Ecological assessments have a degree of subjectivity, being carried out by people with different backgrounds and experience. However, this does not mean the supporting attributes should be removed or weakened. The qualifiers play an important role in signalling when the attributes will apply. Guidelines can provide further detail on interpretation and include worked examples to limit the degree of subjectivity. Ecological context is especially important for highly depleted districts, so we do not support removing these attributes.

Indigenous fauna

Some submitters suggested combining former attributes D3(e) and (f) by redrafting them to read 'supports or provides important habitat for indigenous fauna'. Submitters also put forward additional functions, including moulting, migration staging, post-breeding, flocking and wintering.

We agree there is considerable overlap between the two attributes, such that attribute D3(e) is superfluous and can be removed. We also agree that 'critical' is too high a bar and recommend replacing it with 'important'. As to the habitat functions, they are either stated or implied in the definition of habitat, so do not need to be listed further.

Other matters

Subclause 3.13(1)(c) in the proposed NPSIB provided for SNAs to be identified through a resource consent process, supporting the Schedule 1 process set out in clause 3.8. The intent of this is to provide a pathway for new SNAs to be identified, and protected, if important information comes to light outside a normal plan cycle (10-plus years). This provision required councils to specify where, how and when an assessment and classification required by subclause 3.8(1) is required. When an SNA is identified, it must then be managed as an SNA. This is regardless of whether it has been scheduled into a plan.

Submitters suggested a range of other mechanisms are already used to protect potential SNAs, including conditions of consent. Some believed the classification of an SNA could result in an ad hoc process in various resource consent applications. Others recognised not all SNAs can be sufficiently identified through the Schedule 1 process (for example where a site visit is needed but is not practicable). The ability to recognise and address significant habitat through a resource consent process must be ensured.

We consider there must be some protection for an SNA until it is scheduled in a plan and have made recommendations to the outside SNAs provisions to assist with this (see section 15 of Part B, below).

Mātauranga Māori attributes

Some submitters advocated for the NPSIB enabling the use of 'non-ecological' criteria to identify and map SNAs. Iwi/Māori were concerned the criteria in the proposed NPSIB would fail to address Māori perspectives. One submitter requested a cultural health indicator be included in the criteria. Others said that SNAs would be affected by wāhi tapu and so must be identified with tangata whenua.

We agree mātauranga Māori is an important component of significance. However, we are not aware of a mātauranga framework that could be applied at a national level, or even if this would be considered appropriate. This is one of the reasons why taonga species and ecosystems are identified separately, by tangata whenua.

The criteria listed in Appendix 1 of the proposed NPSIB have been designed specifically to address ecological criteria under section 6(c) of the RMA. Some SNAs will be important for other reasons – for example, culturally or as part of a landscape. However, at the time the criteria were developed we did not feel confident to be able to intermix mātauranga Māori with ecological significance. In addition, the effects management provisions that will then apply to SNAs may be inappropriate or insufficient to protect other values.

This knowledge is likely to be iwi and hapū specific and is likely to require independent criteria and assessments from different areas of expertise than was used to develop the current suite of criteria in Appendix 1 of the NPSIB. We think that this expertise is likely to develop further, as a result of iwi and councils developing provisions for taonga and Māori lands. It is hoped that future versions of the SNA criteria will be better placed to incorporate mātauranga Māori.

Recommendations and decisions

Recommendations for Appendix 1 of the NPSIB

4a) Make minor changes to clarify terminology, remove superfluous attributes and to account for the removal of the High/Medium split; add a glossary to explain ecological terms.

4b) Amend the introductory part to exclude areas from being SNAs (with appropriate safeguards) if they would only qualify based on commonplace widespread flora (Threatened or Declining) or habitat of one At Risk (Declining) species.

4c) Amend Appendix 1(3) 'Manner and form of assessment' so the various information requirements only apply to the extent to which information is available.

4d) Amend the assessment principles for criterion A 'Representativeness' to show that, although representativeness can include commonplace or degraded indigenous vegetation, this is not necessarily the case and depends on the context of the ecological district.

4e) Limit the application of criterion C 'Rarity and distinctiveness' to Threatened and At Risk (Declining) species listed under the New Zealand Threat Classification System (as per exposure draft).

4f) Amend the attribute under criterion C6(d) 'less than 30 per cent of former extent' to read 'less than 20 per cent…' (as per exposure draft).

Minister's decision

Agree

5 Council roles and responsibilities: SNAs and plans

Proposal consulted on

Clause 3.8 of the proposed NPSIB detailed the process for identifying and mapping SNAs: territorial authorities to work with landowners to assess and identify SNAs and then update their plans with maps of the SNAs and their attributes. The process was guided by six principles – partnership, transparency, quality, access, consistency and boundaries.

We asked which level of local government should identify and map SNAs, and for views on implementation. A discussion regarding identifying SNAs on PCL is also included here.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were:

- the principles and approaches set out in subclause 3.8(2) are broadly supported
- there is no clear consensus on which level of local government should identify SNAs, or the maps in which plans should sit
- the two-year timeframe for adding new SNAs is considered too short
- councils are concerned about the resources required to identify SNAs, especially on PCL.

Analysis

Principles and approaches for identifying SNAs

The key to successfully identifying SNAs lies in fostering positive relationships, especially with landowners. As one submitter stated, "In our experience, effective biodiversity protection is underpinned by working with others, building relationships and supporting landowners to get the job done". There was general support for the principles outlined in subclause 3.8(2) of the proposed NPSIB, especially partnership. Disputes around site inspections on private land, and the boundaries of SNAs, were considered the most likely factors that would test these principles.

Physical site inspection and access

Many submitters felt physical inspection was so important it should be done by default, not just wherever practicable. Landowners discussed the need for habitats to be verified through on-the-ground assessments, rather than relying on spatial maps alone, as the values apparent from aerial mapping may not exist on the ground. We agree desktop methods should be used as a *basis* for the criteria, rather than being relied on as the sole means of gauging significance. However, site visits can be expensive and time consuming, especially where sites are in remote locations. And site visits are often not needed to determine significance confidently.

The 'quality' principle requires on-site verification wherever practicable. This could be strengthened in cases where there are landowner disputes about the values or extent of sites. A recommended new provision stipulates visits must be made in these circumstances, unless not practicable for other reasons. If access is denied, an SNA would be presumed to exist (unless outweighed by expert evidence), and the provisional data would be used for

incorporating the SNA into the plan. We consider these adjustments would strike an appropriate balance.

Responsibility for identifying and mapping SNAs

The RMA shares responsibility for biodiversity between regional and district/city councils. Regional councils are responsible for the provisions (that is, objectives, policies and methods) for maintaining indigenous biodiversity. Territorial authorities control the effects of land use to maintain indigenous biodiversity (primarily through rules in plans). Although councils can transfer their functions to each other, this division means both district and regional plans tend to contain biodiversity provisions and their supporting information in the form of maps or schedules. This usually results in aquatic biodiversity (freshwater and the coastal marine area) being addressed at the regional level, in terms of both provisions and effects management, while terrestrial biodiversity is considered a district matter.

The NPSIB gives territorial authorities the responsibility for identifying and mapping SNAs due to their links with RMA land use functions, and to build on emerging council practice.

However, many submitters desired a more collaborative, integrated approach. We considered how we might build on the strengths of each type of local government. Regional councils have scientific expertise and monitoring data that are not always available at a district level, a more comprehensive view of which areas in their districts are significant, and established relationships with landowners from their work with wetlands and waterways. Territorial authorities hold more detailed knowledge of subdivision, use and development pressures and have experience with identifying SNAs. Some have also been proactive in urban biodiversity initiatives.

Some submitters proposed a two-stage process, where regional councils would identify an indicative list of SNAs (using the spatial techniques and scientific expertise available to them), and territorial authorities would then confirm SNAs through consultation and ground-truthing. One expression of this option is to follow the approach set out in other parts of the proposed NPSIB, which requires a regional council to 'work together with the territorial authorities in its region'. We like this approach but think that it also presents risks. If responsibilities are not clearly expressed, there may be arguments about who does what, and work may 'fall through the cracks'. Statutory requirements can also only go so far; good relationships between regions and their districts will be needed. And in some areas, collaboration may cut across existing or emerging practices, where councils have developed approaches that suit them best.

The options span the continuum between flexibility and certainty. A 'flexible' approach may be to require councils to work together to agree on a process for identifying SNAs. A 'middle' approach could see the steps being set out in a similar way to those in clause 3.14 for identifying taonga. A 'prescriptive' approach would include more detail, allocating responsibility for each step. Flexibility allows councils to develop processes that best suit them but potentially misses an opportunity for greater certainty, clarity and leadership. A prescriptive approach may suit councils that are already operating in a similar way but would be challenging for others. Taking the middle ground would allow best practice to continue while providing a framework for greater collaboration where needed.

In light of resource management reform, we think it efficient to avoid too much prescription, as roles will change anyway. Requiring some degree of collaboration but not specifying it allows regions and districts to set themselves up for the new planning requirements. We,

therefore, recommend the 'middle' approach (requiring regions to assist if requested, while not preventing greater collaboration).

Use of a specialised organisation for SNA identification

Several submitters suggested an independent organisation, such as Manaaki Whenua | Landcare Research or the Queen Elizabeth II National Trust (QEII National Trust), be tasked with identifying SNAs. The advantage of this is such an organisation would be free of the political pressure that has arguably prevented some councils completing SNA identification.

If only a few council plans contained SNAs, there would be merit in this approach. However, more than two-thirds of councils have started or completed SNA identification. The time and costs involved (such as for establishing terms of reference, paying members and obtaining any additional ecological advice) would outweigh the benefits.

Which type of plan should contain SNAs?

SNAs are currently mapped in district plans, as these are the plans that manage land use. The district plan is also made at a finer scale compared to regional plans, reflecting the underlying ecological values usually at an ecological district or land environment level. District plans are generally easier to update than regional plans or policy statements as they tend to be subject to more frequent plan changes.

Regional plans or policy statements

We considered whether district requirements should continue, or if SNAs should be mapped into regional plans or policy statements instead. Regional mapping would allow a one-stop-shop approach, as it would include coastal marine and freshwater/wetland SNAs and would cover all districts in the region. It would allow any gaps in buffering or connectivity to be more readily identified. Further, consent applicants and submitters would only need to go to one place to determine if a proposal included an SNA. However, few regional plans currently contain maps of terrestrial SNAs, so mapping in regional plans would be a significant departure from planning practice.

Many of the advantages of including mapping in regional plans would also occur if SNAs were scheduled in Regional Policy Statements (RPSs), which represent the highest-level planning documents and are usually created in collaboration with territorial authorities. However, RPSs are not updated as often as plans and do not contain rules, so landowners may not be used to referring to them or making submissions on them.

District plans

There are strong arguments for retaining mapping in district plans. It aligns with the key threats to terrestrial biodiversity, particularly the intensification resulting from urbanisation and subdivision, as highlighted by the Hawke's Bay Regional Council: "… land use, sub-division and development present the largest risk ... District Plans manage land use activities and are, therefore, the most appropriate place to house SNA schedules". Providing mapping in district plans would also build on current practice, where around 60 per cent of councils have already mapped SNAs in their plans. As one landowner commented, "There is valuable experience and knowledge in District Councils on SNAs. Why bypass this?"

Resource management reform legislation is likely to see significant changes in planning at both district and regional levels. The use of joint planning committees will require greater

cooperation between districts and regions. In some places this is happening already. We think it would be most efficient if the NPSIB encouraged this approach, while not changing the status quo in the interim period before new plans and spatial strategies are created. Minimising the degree of change required during the transition would mean councils could prioritise biodiversity resources toward SNA identification and protection.

Identifying SNAs on PCL

The costs to councils associated with identifying SNAs through full SNA assessments on conservation land managed by DOC were raised as an issue by some councils. These costs would depend on the extent and complexity of PCL indigenous biodiversity cover within a district.

Identifying SNAs on PCL is less important for effects management given most of this land has some protection under conservation legislation. However, SNA identification on PCL enables a greater understanding/monitoring of biodiversity nationwide. It also better allows for connectivity and an integrated approach to the management and reconnection of SNAs (that is, SNAs do not stop at the boundaries of PCL). It is also important the Crown takes responsibility for SNAs on its land.

We, therefore, recommend enabling councils, in consultation with DOC, to identify SNAs on some areas of PCL without needing to assess them. These areas would include large contiguous tracts of land and other sites where there is high confidence, they would meet at least one of the SNA assessment criteria (for example, national parks and scientific and nature reserves, which are likely to trigger multiple Appendix 1 attributes).

Councils may choose to assess this land if they wish. They will still need to assess the remaining PCL that does not fall within the listed categories. The intent is to reduce the assessment load from the more obvious sites, while retaining the NPSIB's tenure-neutral approach. It would also help address the issues raised by submitters about costs and resourcing.

Once SNAs on PCL are identified and included in plans (automatically or through assessments) the SNA management provisions in the NPSIB will apply. These provisions will include a limited Crown exception (from the avoids set out in clause 3.10(2), and the effects management hierarchy) for those activities undertaken in accordance with a management plan or strategy. Other activities or non-Crown parties would still attract the full effects management provisions.

Implementation challenges

One submitter summed up the main logistical barriers to implementing SNAs as follows: "Whilst mapping by territorial authorities has occurred in some districts, in others the process has been unsatisfactory due to lack of resourcing, expertise and the refusal of access to properties by landowners. These are all barriers that will need to be addressed at the outset so that there is a clear pathway for this important work to be undertaken."

Many submitters emphasised the lack of ecological experts in Aotearoa to do SNA identification, noting a potential shortage of ecologists to carry out field work and map SNAs. There was consensus central government would need to fund capacity building in this area. The New Zealand Ecological Society suggested this should include supporting vocational training for practical ecological assessments. It also considered it valuable to embed new field capability in councils as permanent staff, rather than employing external consultants.

Comprehensive guidance was also called for to ensure the work is performed consistently and well.

Manaaki Whenua | Landcare Research requested that the Ministry play a lead role in ensuring there are adequate resources and data products for mapping SNAs, including data systems to simplify access to the distribution and threat status of species, land environments and their threat status and land cover classifications. Another submitter said the datasets currently available to support SNA identification are out of date. They recommended central government look to the datasets produced under tenure review, where a high level of detailed information exists.

Indigenous biodiversity cannot be protected through regulation alone. It also requires goodwill and action by those closest to the sites, who are usually landowners. Many submitters suggested collaboration and financial incentives are important non-regulatory approaches to identifying SNAs. The lack of strong economic drivers for landowners to look after the biodiversity on their land can be an obstacle to protecting biodiversity. Financial support can range from assistance in meeting costs (for example, of fencing) through to larger incentives that make it economically viable for landowners to protect SNAs on their properties. Providing financial support would also help reduce the risk of landowners clearing SNAs in anticipation of the NPSIB to avoid having them identified as such.

Funding to help provide the implementation package has been secured through the Biodiversity Protection and Incentives Budget 2022 initiative. The initiative provides $19.46 million towards supporting the implementation of the NPSIB. Of this funding, $17.42 million is dependent on the gazettal of the NPS, and the other $2.04 million is available for the development of biodiversity incentives. The Government is exploring its role alongside iwi and hapū in setting up a biodiversity credit system for Aotearoa. This would complement the NPSIB and help incentivise the protection and restoration of indigenous biodiversity.

We recommend central government establishes and maintains a national database of SNAs and their attributes, as well as the results of any monitoring. This would enable regional gaps to be identified and be a source of best practice information available for councils. It would also assist in evaluating the effectiveness of the NPSIB in maintaining biodiversity and contribute to international reporting.

We also recommend central government plays a strong support role in assisting councils to identify and map SNAs and to schedule them into their plans. This could include contributing to ecological work on a regional basis, putting councils in touch with others who can help, setting up pilot regions and maintaining a list of ecological consultancies and their rates and experience.

Timeframes

The discussion document asked if the proposed timeframes for SNA identification, mapping and scheduling were reasonable. Many submitters believed the proposed implementation timeframes were either too short or too long. Alternatives ranged from six months (as urgent action is needed to address the decline in indigenous biodiversity) to 30 years (the time needed to do the work thoroughly).

The information required for SNA identification is already available in many areas, and urgent action is needed given the current biodiversity crisis. However, those who thought the timeframes were too short believed this would compromise SNA identification, resulting in

an under- or overestimation of SNAs. They argued longer timeframes would allow robust SNA assessments to be done with landowners and tangata whenua. In particular, some smaller councils with many potential SNAs may struggle to meet the timeframes. One submitter recommended a regulatory backstop to prevent the clearance of indigenous cover before SNAs can be incorporated into plans. Many councils already have rules in their plans controlling vegetation clearance, but we agree that additional protection should be explored.

In our view, the timeframes included in the proposed NPSIB are workable for most councils (SNAs identified within five years of gazettal). We recommend implementation support be provided to those who may struggle due to large land areas and low rating bases. Submitters also suggested practice notes, centralised/combined procurement processes and specific datasets would help councils meet the proposed timeframes.

Timeframe for incorporating new SNAs

Subclause 3.8(8) required councils to update their plans every two years to include any SNAs identified outside the main survey process (for example, because of resource consent applications). Plan changes can themselves take several years, and most councils found this two-year requirement too short. We, therefore, propose this update to happen at the time of the next plan change (clause 3.8(6)).

Timeframes for giving effect to other clauses

For clarity, the NPSIB specifies that local authorities must publicly notify any changes to their policy statements and plans needed to give effect to SNA requirements within eight years of commencement. The proposed NPSIB specified timing requirements within the relevant clause. For example, the previous timing requirements for mapping SNAs were within clause 3.8 of the proposed NPSIB. However, as part of the drafting process, all timing requirements have been grouped together and listed in Part 4 'Timing' of the proposed NPSIB.

Recommendations and decisions

Recommendations for council roles and responsibilities

Changes to subclause 3.8:

5a) Amend to require regional councils to work together with territorial authorities to identify and map SNAs.

5b) Require site visits for potential SNAs where the values or extent of the SNAs are disputed by the landowner (if practicable). If not practicable (for example, because the site is inaccessible or access is denied), the best available information will be used to verify the SNAs.

5c) Clarify that existing SNAs do not require site visits if the methodology originally used to identify them is consistent with the approach in Appendix 1 of the proposed NPSIB (in the opinion of a suitably qualified ecologist).

5d) Note councils may look to the Ministry for the Environment to provide verification or audits of the opinion in 5(c).

5e) Require any new SNAs to be added at the time of the next plan or plan change (rather than within two years).

5f) Provide a streamlined requirement for the identification of SNAs on public conservation land, by allowing the following areas of public conservation land to be automatically considered SNAs:

- a large area managed under common protection status, such as a national park
- a contiguous area comprising protected areas with a similar protection status under a conservation management strategy
- a well-defined landscape or geographical feature such as an island or mountain range.

Other pieces of PCL that do not come within those categories must be assessed using the Appendix 1 criteria.

5g) Add a requirement for physical inspection (if practicable) where a landowner disputes the boundaries or values of an SNA.

5h) Clarify that councils with existing SNAs need to confirm that they used an approach equivalent to Appendix 1 (that is, they do not need to reassess each SNA on a site-by-site basis).

Other recommendations:

5i) Note that establishing and maintaining a national database of SNAs (including their attributes and monitoring information) is important for the effective implementation of this Part, and would also help in meeting the requirements of clause 4.1.

5j) Note that councils with high indigenous vegetation cover and/or low rating bases may need financial support for meeting the requirements relating to SNAs.

5k) Note that all timing provisions are now grouped together in Part 4 'Timing' of the proposed NPSIB.

Minister's decision

Agree

6 Recognising and protecting taonga species and ecosystems

Proposal consulted on

Section 6(e) of the RMA provides, as a matter of national importance, for recognition of the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga. Section 7(a) brings the concept of kaitiakitanga into RMA decision-making. However, to date, there has been no clear process for tangata whenua to proactively identify their kaitiaki interest in taonga species and ecosystems. The proposed NPSIB set out a process for the identification and management of indigenous species and ecosystems that are taonga. These are species, ecosystems, sites and individual or groups of plants or animals treasured by tangata whenua.

The proposed NPSIB gave a framework for local authorities to work with tangata whenua to agree on a process for identifying and protecting taonga species and ecosystems to the extent desired by tangata whenua. This approach left it for tangata whenua to choose whether to identify taonga, the level of detail to be provided and the extent to which they wish details to be included in council plans. Territorial authorities must only then include identified taonga in their plans.

This flexible process aimed to ensure tangata whenua retain control of the release of information about their taonga, so information is not revealed where there is a risk the taonga could be disturbed or lost if made public.

The process was included in a policy 'to identify and protect indigenous species and ecosystems that are taonga', and in clause 3.14, which required regional councils to work with territorial authorities and tangata whenua to agree on a process for:

- identifying indigenous species and ecosystems that are taonga
- describing the taonga
- mapping or describing the location of the taonga
- describing the values of each taonga.

If taonga are identified in an SNA, local authorities must manage them in accordance with clause 3.9, which sets out a process for managing effects on SNAs. Local authorities must also manage identified taonga located outside SNAs as necessary to protect the taonga and their values and to give Māori opportunities to restore and enhance the taonga and their values.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were:

- whether the process provides tangata whenua with a sufficient decision-making role over their taonga
- the need for clarity on the link between the management of SNAs and the provisions that apply outside SNAs
- the need to provide for the roles of specific entities in the process, such as Māori landowners, hapū and DOC

- whether the scope of taonga should be specifically defined or limited further than the definition of identified taonga
- if the provisions for identifying and managing taonga should apply to private land, or if specific provisions for consultation, notification and access should be applied.

Analysis

Most submitters agreed or partially agreed with the approach to identifying and managing taonga. This is because it provided a collaborative approach and a flexible process for tangata whenua to choose whether to identify taonga. Iwi/Māori were evenly divided in their support of the approach. Those iwi/Māori who supported the approach did so because it recognises and protects taonga species and ecosystems and gives them discretion on the extent to which they identify taonga and their values. Those iwi/Māori who opposed the approach mainly did so because of a lack of detail on how they would be decision-makers for their taonga species.

Overall, there was considerable support for the identified taonga provisions. We recommend they be retained but with some changes.

Involvement of tangata whenua in management and decision-making for taonga species

The decision-making role and clause 3.3

Some submitters considered the provisions did not go far enough to ensure tangata whenua were decision-makers over their taonga species and ecosystems. Some referred to the Wai 262 report,[28] noting the proposed NPSIB provisions may not provide the level of control or partnership envisaged by that report.

An NPS cannot directly assign obligations to any person or body other than local authorities. Consequently, it cannot give a direct decision-making role (at the plan-making or resource-consent decision level) to tangata whenua, nor can it require local authorities to transfer functions or decision-making power. The RMA allocates functions for managing natural and physical resources, including indigenous biodiversity, to local authorities, and an NPS must work within the RMA framework.

In that framework, the NPSIB aims to provide a process for the identification and management of taonga species consistent with The Treaty of Waitangi/Te Tiriti o Waitangi and RMA sections 6(e) and 7(a). We therefore recommend councils be required to work in partnership with tangata whenua to protect taonga as far as practicable and to involve tangata whenua (to the extent they wish to be involved) in the management of taonga.

As noted above, we recommend clause 3.3 recognises the role of tangata whenua as partners in the management of indigenous biodiversity, including in decision-making processes for the implementation of the NPSIB. This is intended to cover decision-making about taonga.

We also recommended in section 3 of Part B, above, that more specific reference be made to the RMA mechanisms enabling this, such as section 33 'Transfer of powers', section 36B

[28] Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity (Wai 262)*. Wellington: Waitangi Tribunal.

'Power to make joint management agreements' and Mana Whakahono ā Rohe | Iwi Participation Arrangements.

We expect local authorities and tangata whenua to use those RMA mechanisms, particularly for identified taonga.

Through these mechanisms, it is the intention that tangata whenua will be strongly involved in the management of those taonga they have identified and are included in plans. In practice, we know the RMA mechanisms referred to above have not been used very frequently. This stronger direction in the NPSIB for local authorities to use these mechanisms would help to encourage their use.

Data sovereignty and management

Another related issue raised by submitters was data sovereignty, or the level of control tangata whenua would have over the information and data provided about taonga species and ecosystems. Data sovereignty relates to the rights and interests a group or person has to the collection, ownership and application of their own data.

Taonga provisions in the proposed NPSIB were developed to allow flexibility for tangata whenua to decide at each stage on the level to which they wish taonga to be addressed in RMA processes. This ensures tangata whenua have control at each stage to decide if information is released to the public or not. We recognise that iwi, hapū and whānau who are kaitiaki of a taonga species or ecosystem may want to know how the data on the species are being stored and would like to ensure any mātauranga around the species is kept protected and confidential by the relevant local authority. We acknowledge concerns that the use of sensitive information may be a barrier to tangata whenua engagement in the process. We wish to ensure, as far as possible, this does not happen.

Therefore, we recommend the NPSIB gives clear direction to local authorities to work together with tangata whenua on a process for the general management of information. This process would aim to ensure any information provided by tangata whenua in their role as kaitiaki is kept confidential between them and the local authority, if requested (bearing in mind that council processes are subject to the Local Government Official Information and Meetings Act 1987, which provides for information to be provided to the public). This requirement for processes for information management would apply particularly to taonga species and ecosystems and the mātauranga around those, but also to other matters addressed in clause 3.3.

Management of identified taonga in SNAs

We also considered the suitability and clarity of the requirement to manage identified taonga located within SNAs. Some submitters raised the issue that, in general, it is not clear how the SNA management provisions apply to the management of identified taonga.

The intent behind taonga being managed in accordance with the same provisions for managing SNAs where the two coincide was to provide a very high level of protection to taonga, because provisions protecting SNAs would also be protective of identified taonga. However, taonga values were not referred to in the wording of clause 3.9, making it unclear how this clause would apply to identified taonga.

To address this, we recommend where taonga are also SNAs, they must be managed in a manner consistent with the management approach applying to the SNAs. In addition, the mauri and values of the taonga, and the historical, cultural and spiritual relationships of

tangata whenua with the taonga, must be taken into account in managing the SNAs. In this way, if an identified taonga is an SNA or is in an SNA, the two management approaches may be applied, but the taonga management approach may not conflict with or be inconsistent with the SNA management approach. For example, the taonga management approach will not enable a more permissive approach than the SNA management approach. The SNA management provisions apply, but this allows the specified values of the taonga (as addressed below) to be protected.

The adverse effects listed in subclause 3.9(1) on the identified taonga would be avoided in accordance with that subclause. The effects management hierarchy would apply to managing all other effects on identified taonga in SNAs in the same way as was outlined in subclauses 3.9(1)(b) and 3.9(2).

The exception to this is Māori lands. In section 16 of Part B, below, we make recommendations to change the management of adverse effects on indigenous biodiversity, including identified SNAs and taonga, on Māori lands. We recommend clarifying that where taonga are located on Māori lands, they are managed according to the Māori lands provisions whether or not they coincide with SNAs.

The recommended Māori lands provisions establish a framework for local authorities and tangata whenua to develop objectives, policies and methods for managing adverse effects on identified taonga. The recommended provisions require them, when managing the effects of occupation, development and use, to consider alternative approaches or locations to avoid adverse effects on the identified taonga, and also to consider there may be limited or no alternative locations. We consider this framework is just as appropriate for identified taonga located on Māori lands as it is for SNAs located on Māori lands. It enables them to be protected but for flexible solutions to be crafted to enable development.

We also considered the difference between those taonga species that tangata whenua inform councils of but do not wish to have included and protected in a plan, and those taonga tangata whenua wish to have in a plan. We consider that because there are different levels of protection available, it is firstly necessary for the clause to differentiate them. Secondly, we recommend protection be accorded to both, to the extent practicable. There will be a lesser ability to protect those not listed in a plan. However, councils may hold that information in silent files, for example, and require resource consent applicants to consult and obtain cultural assessments. For those included in a plan, a greater level of protection will be available as appropriate.

Ensuring the values of taonga are taken into account

The proposed NPSIB provided a definition of 'adverse effects' in subclause 1.7(4) that included '… the degradation of mauri'[29] and 'a reduction in people's ability to connect with and benefit from indigenous biodiversity, including from benefits such as the historical, cultural or spiritual relationship of tangata whenua with their taonga'.[30] The intent of this definition is for local authorities to consider effects on these values, and on the ecological values, when managing indigenous biodiversity.

In section 10 of Part B, below, which covers the previous clause 3.9 'Managing adverse effects on SNAs', we include a recommendation to remove subclause 1.7(4) but to address the effects in relation to relevant provisions. We recommend the process outlined in subclause 3.14(1) for

[29] Subclause 1.7(4)(e).

[30] Subclause 1.7(4)(i).

describing the values of each taonga include describing the historical, cultural and/or spiritual relationship of tangata whenua with the taonga.

We recommend where the adverse effects of activities on identified taonga are considered – for example, through the effects management hierarchy – this includes the effects on:

- the mauri of the taonga
- the values of the taonga as identified by tangata whenua
- the historical, cultural or spiritual relationship of tangata whenua with the taonga, as identified by tangata whenua.

In this way, SNAs that are (or include) identified taonga can be managed holistically, with all relevant effects being considered. We also recommend this applies to identified taonga outside SNAs. We note iwi/hapū management plans are useful tools for tangata whenua in identifying their kaitiaki interests and values for taonga and may inform this process.

Sustainable customary use

We also considered the recognition of sustainable customary use in the SNA management provisions of the proposed NPSIB as, in some cases, this will involve an indigenous species or ecosystem that is taonga and in an SNA. We, therefore, recommend local authorities, together with tangata whenua, must ensure the sustainable customary use of identified taonga, in accordance with tikanga Māori and in ways consistent with taonga protection, whether or not the taonga is located in an SNA. As noted in section 3 of Part B, above, on the principles of The Treaty of Waitangi/Te Tiriti o Waitangi, we also recommend the clause that addresses partnership and kaitiakitanga across the NPSIB also clearly refer to opportunities for allowing sustainable customary use of indigenous biodiversity, in both SNAs and identified taonga.

This also aligns with the recommendations for managing adverse effects on SNAs. In section 12 of Part B, below, we recommend customary use be added as an exception to subclause 3.9(4) 'Managing adverse effects on SNAs'.

Other roles

A few submitters asked for some groups to be specifically included in the process for identifying taonga – with both iwi/hapū and Māori landowners being suggested.

Clause 3.14 of the proposed NPSIB required local authorities to work with tangata whenua to agree on a taonga management process. This issue has been addressed in section 3 of Part B, above, on providing for the principles of The Treaty of Waitangi/Te Tiriti o Waitangi. We noted the RMA definition of tangata whenua is 'the iwi, or hapū, that holds mana whenua over that area' so there is no need to specify hapū. We also recommended in that section the NPSIB make it clear local authorities should have regard to the different levels of whānau, hapū and iwi decision-making structures when engaging.

In practice, we expect both iwi and hapū will be involved in the process of taonga identification and management. This can be addressed in guidance.

For taonga, we consider iwi and hapū hold kaitiakitanga and should be responsible for developing the relevant process. The involvement of iwi and hapū will ensure Māori landowners are included in the process where they are members of the relevant iwi or hapū.

A few submitters (councils and iwi/Māori) believed the provisions should require the local authority functions for the identification and management of taonga to be done in partnership with DOC. However, although DOC's knowledge and expertise can be used for this process, we do not consider it necessary or appropriate to refer to DOC in this provision.

Link between identification and management processes for taonga and SNAs

Some submitters queried the link between the processes for identifying and managing taonga and SNAs, expressing the view this link needed to be clear.

Some suggested the processes should be amalgamated, although the values should remain separate. The BCG envisaged the processes would be amalgamated after tangata whenua had identified their taonga and values. These would then be part of a community (including tangata whenua) approach to identifying SNAs. We consider there is scope for the two processes to be run together if desired by tangata whenua, without specific changes to the NPSIB. Further, in the recommendations on assessing areas qualifying as SNAs, we recommend the partnership principle referred to for the identification of SNAs also include tangata whenua. This means tangata whenua will also be involved in the SNA identification process.

Scope of taonga

Some submitters considered, without further prescription or detail, the scope of taonga could be too extensive. Some suggested criteria should be developed to select and prioritise taonga, given the broad way the concept is used. A few also requested the specific inclusion of insects and fungi.

In the proposed NPSIB, 'identified taonga' meant 'indigenous species, populations or ecosystems identified by tangata whenua as taonga, as provided for in clause 3.14'.

There is no need to refer specifically to insects and fungi because, if they are indigenous and identified as taonga, they will fall under this definition.

Identified taonga could extend to broad categories. Treaty settlements have, in many cases, identified taonga, and iwi management plans also often set out taonga. However, we do not consider the NPSIB should define or limit these, as is noted in the Wai 262 report.[31]

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 it, the existence and credibility of which can be tested.

We suggest the extent of identified taonga should be determined by tangata whenua in the process specified by the NPSIB and, therefore, we do not recommend any changes to define the extent.

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[31] Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity (Wai 262)*. Wellington: Waitangi Tribunal.

Application to private land

A few submitters opposed the identification of taonga on private land. Reasons for this included concern it would cause division in communities and the opinion that tangata whenua should only be able to identify taonga on their own and public land, not private land. Some submitters were concerned they would be required to give access to taonga on their land.

It is appropriate the NPSIB address the identification of both taonga and SNAs on private land. Identification and planning provisions to manage taonga do not authorise access to private land for customary use or any other purpose. Only landowners can give permission for third parties to access their land.

It is, however, appropriate if taonga are identified on private land in a plan, the landowner is informed before the formal plan process begins. We, therefore, recommend territorial authorities are required to notify landowners of the presence of taonga before taonga are identified in proposed plans.

More information about appropriate procedures for seeking access to taonga (for identification purposes or on an ongoing basis – for example, for customary use) can be addressed in guidance developed by tangata whenua and local authorities at a local level.

Recommendations and decisions

Recommendations for recognising and protecting taonga species and ecosystems

6a) Require local authorities to work in partnership with tangata whenua to protect taonga as far as practical and involve tangata whenua, to the extent they wish to be involved, in the management of taonga.

6b) Require local authorities to work together with tangata whenua in developing processes for information management, to ensure that, where information is provided by tangata whenua in their role as kaitiaki, the information is kept confidential between them and the local authorities where appropriate.

6c) Require that, where a taonga coincides with an SNA:

- the identified taonga must be managed in a manner consistent with the management approach applying to the SNA and the mauri and values of the taonga
- the historical, cultural and spiritual relationship of tangata whenua with the taonga must be taken into account in managing the SNA, except that, where it is located on Māori lands, the Māori lands provisions apply.

6d) Differentiate between those taonga that tangata whenua inform territorial authorities about but do not wish to have included in plans (acknowledged taonga), and those identified in plans (identified taonga), so that appropriate levels of management and protection can be applied to each of these.

6e) Add another item to the description of taonga that can be identified in plans, so it covers the historical, cultural and spiritual relationship of tangata whenua with taonga, if tangata whenua agree.

6f) Clarify that if taonga species are on Māori lands, the Māori lands provisions apply for management.

6g) Clarify that where adverse effects on identified taonga are considered, consideration is given to the adverse effects on:

- the mauri of the taonga
- the values of the taonga as identified by tangata whenua
- the historical, cultural or spiritual relationships of tangata whenua with the taonga, as identified by tangata whenua.

6h) Require local authorities to work with tangata whenua to consider opportunities for allowing the sustainable customary use of identified taonga in accordance with tikanga Māori – and in a way that is consistent with taonga protection, whether or not an identified taonga is located in an SNA.

6i) Require councils to inform landowners of the presence of taonga before the taonga are identified in a proposed plan.

Minister's decision

Agree

7 Highly mobile fauna

Proposal consulted on

Some animal species move frequently between different landscapes to find food, mates or refuge. These species often use areas outside SNAs or are not identified in SNAs because of their transience. For example, wetland birds such as matuku/Australasian bittern are known to seek out wet pastures spanning several local authority areas for feeding. Also, pekapeka-tou-roa/long-tailed bats roost in a range of suitable trees, including exotic species. These mobile species are often threatened by a wide range of human-induced pressures when they use habitats outside protected areas or while in transit. A lack of basic awareness of the presence or effects on highly mobile fauna makes it difficult to address adverse effects on these species, especially at the resource consent stage.

The proposed NPSIB aimed to improve this situation through requirements to collect and provide information on highly mobile fauna, and in some cases to consider spatial controls (highly mobile fauna areas).

Key issues from submissions

The key issues identified through submissions and subsequent analysis were as follows.

- Councils do not have the expertise to survey, record and manage highly mobile fauna.
- The scope of the provisions is unclear in terms of which fauna is included.
- The provisions are superfluous, because the habitat of rare species will also be SNAs.
- The implications for landowners are not specified.

Analysis

Protecting SNAs is not sufficient to ensure the survival of highly mobile species across their natural ranges. Mobile fauna can easily be left out of SNA identification, because they are not present at the time of survey or are difficult to detect. The proposed requirements continue the impetus started by the BCG for agencies, iwi and stakeholders to work together to better understand and protect mobile fauna species. We recommend retaining the provisions, but with amendments. This is in response to submissions for better clarity and workability.

There was some confusion about the need to provide for highly mobile fauna given an area providing habitat for threatened species would be an SNA. Both are needed. The two concepts of habitat and use are intended to complement each other, based on the degree of occupation. ‘Habitat’ refers to a degree of seasonal or permanent occupation by a species (for example, on a daily or seasonal basis). ‘Use’, on the other hand, refers to areas that might be utilised by fauna in a more temporary way, but still associated with survival needs. Sites of fleeting or incidental presence will be neither SNAs nor highly mobile fauna areas, but councils could still choose to record and provide information if their communities wish.

Scope

Many submitters supported the intent of the provisions but were concerned the scope was too broad or uncertain. There were questions about whether taxonomic groups such as

invertebrates were included, or if passive mobility was relevant (for example, spiders spread by 'ballooning' on air currents). Another scope issue included the high number of species potentially considered highly mobile.

We agree greater certainty is desirable in giving boundaries around the implications for councils and stakeholders. Although the New Zealand Threat Classification System lists do give finite boundaries, the number of Threatened and At Risk birds alone amount to some 180 species (although not all of these would be considered highly mobile). Some councils suggested highly mobile species should be determined by DOC and placed in an appendix or incorporated by reference. The advantage of this approach is it would give certainty and focus attention on those species that would most benefit from provisions in district and regional plans. DOC has produced a list of 49 mobile terrestrial threatened species as part of a research programme.[32] We recommend including this list in the NPSIB as an appendix. DOC estimates it will review this list approximately every five years, which seems an acceptable timeframe given most other national direction is first amended within four or five years of gazettal.

Freshwater and coastal marine domains

Many highly mobile species move between different environmental domains. For example, tuna/eels can travel over land between waterways. Kororā/blue penguins spend the day at sea and return to burrows on land at night outside the moulting and nesting periods.

Waterbodies and the coastal marine area are outside the scope of the NPSIB. However, we think mobile fauna species should not be excluded purely because they use these areas as well as the terrestrial environment. We have amended the exposure draft accordingly.

We note the NPS-FM requires habitats of threatened species to be identified, including 'specialised habitat or conditions needed for only part of the life cycle…'. Given regional councils already have this role, we think it most efficient to identify highly mobile fauna areas in the RPS. This would be more efficient than territorial authorities starting from scratch.

However, highly mobile fauna areas can only be included if it will help manage adverse effects.

Availability of expertise and the role of councils

Most councils said they did not have the expertise to manage highly mobile fauna. They also pointed to DOC, referring to its function under section 41 of the Wildlife Act (WLA) to 'prepare and carry out wildlife surveys'.

In practice, some councils play an active part in surveying and recording wildlife or require it as part of assessing effects in applications for resource consent. For example, Hamilton City Council's Project Echo surveys pekapeka/long-tailed bats. Greater Wellington Regional Council has published guidance for protecting lizards through the resource consent process.[33] These are legitimate council functions under the RMA, arising from requirements to have regard to the intrinsic values of ecosystems, including Threatened species. They are also aspects of managing adverse effects and maintaining indigenous biodiversity under sections 30 and 31 of the RMA.

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[32] Department of Conservation. 2020. *Biodiversity 2018 Funding: Workstream 1.2a Mobile terrestrial threatened species programme*. Unpublished report.

[33] Wildlands Consultants. 2019. *Guidance for protecting lizards through the resource consent process*. *Contract Report No. 4544b*.

That said, requiring councils to do proactive surveys of a wide range of fauna is more akin to the functions envisaged by the WLA, and could add significant cost. We also note the BCG stopped short of recommending councils survey highly mobile fauna in the proposed NPSIB.[34] We, therefore, amended the draft to only require councils to use pre-existing information.[35]

DOC has powers under the WLA to coordinate the policies and activities of local authorities relating to protecting and managing wildlife, and to collect wildlife information. We consider it appropriate DOC takes the lead in producing the information. However, councils are well placed to combine this information with community knowledge and make it readily available at their offices or online. They also have a strong role as 'hubs' of information for their regions through landowners, community groups and consent processes.

We see information about mobile species as forming an important evidence base for both regulatory and non-regulatory measures to protect threatened mobile fauna, so recommend retaining a council function of holding this information.

Trigger for provision

The original requirement was to record areas outside SNAs where highly mobile fauna 'have been or are likely to be, sometimes present'. This attracted much criticism for its uncertainty, and we amended the exposure draft to areas 'intermittently used by' highly mobile fauna. This requires a relatively predictable purpose rather than a fleeting or transient presence. It is designed to address the concern that anywhere a Threatened bird happens to perch could become subject to plan rules, while capturing regular use areas such as flyways, which can be subject to significant threats (for example, from wind turbines, transmission lines and light pollution).

Focusing on areas 'used' by highly mobile fauna is also consistent with the requirements for assessments of environmental effects (AEEs). Where an area has been identified as a highly mobile fauna area, an AEE must include information about 'the use of the area' by highly mobile fauna (clause 3.19).

Submitters referred to several regulatory actions needed to protect highly mobile Threatened species. We acknowledge the proposed NPSIB will need to supplement other controls in some areas, for example in reducing coastal disturbance by vehicles, dogs and horses, minimising light spill for seabirds returning to burrows at night and preventing nest disturbance by overflying aircraft.

The highly mobile fauna provisions are needed because habitat protection alone is insufficient in providing for these species. They need a more flexible, agile approach spanning administrative boundaries. As one submitter observed: "Well coordinated management of indigenous wildlife populations and habitat across the landscape is essential for the maintenance and enhancement of highly mobile species. This management can be complex as it involves many interests and landowners but is necessary particularly for Threatened species."

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[34] Biodiversity Collaborative Group. 2018. *Report of the Biodiversity Collaborative Group*. Wellington: Biodiversity (Land and Freshwater) Stakeholder Trust. p 32.

[35] Councils may still require surveys to be completed as part of resource consent applications.

What are the implications for landowners?

Some landowners were concerned about the kinds of controls councils might impose on the use of their properties if highly mobile fauna areas were established. Examples included the prevention of grazing, an inability to trim or remove vegetation, an inability to sow fields at the right time, and stock exclusion.

It will be important to give some certainty on the range of provisions that might be helpful in managing highly mobile fauna areas. Because the provisions will differ according to species and locations, this is best done by guidance. Once a highly mobile fauna area is identified, the most effective management may be to work with landowners on flexible ways of protecting the fauna without the need for rules – for example by tailoring farm plan provisions to individual properties and species. Councils can include rules in plans for highly mobile fauna areas, but only 'as necessary to maintain viable populations'. Any provision will be subject to the other RMA legal tests, including reasonable use. Giving information and support is likely to be more effective in most cases. We acknowledge some management actions may need to occur with a statutory basis outside the RMA, for example in reducing coastal disturbance by vehicles, dogs and horses and minimising light spill for seabirds returning to burrows at night.

Recommendations and decisions

Recommendations for highly mobile fauna

7a) Add a list of specified highly mobile fauna to the NPSIB (as Appendix 2).

7b) Improve clarity by making several drafting changes, including:

- deleting the requirement to 'survey' for highly mobile fauna
- changing the focus to managing adverse effects rather than the fauna directly
- requiring areas to be 'intermittently used by' highly mobile fauna (not just 'present').

7c) Ensure that highly mobile species that use waterbodies and the coastal marine area are not excluded from the provisions.

Minister's decision

Agree

Managing adverse effects on biodiversity

8 Effects management hierarchy

Proposal consulted on

The effects management hierarchy was defined in clause 1.8 (definitions) of the proposed NPSIB. It referred to a set of steps to be applied sequentially to manage adverse effects and minimise risks to indigenous biodiversity. It was referred to in provisions for managing adverse effects on SNAs and for managing adverse effects on biodiversity outside SNAs when local authorities specify where, how and when controls on subdivision, use and development are necessary to maintain indigenous biodiversity.

Key issues from submissions

The key issues identified through submissions and subsequent analysis included whether:

- the order and terms of the hierarchy should be amended to 'avoid – minimise – remedy – biodiversity offset – biodiversity compensate'
- an outcomes-based approach is preferable to the hierarchy
- the consideration of each step of the hierarchy should be amended from 'where possible' to 'where practicable' or a similar alternative to ensure consent applicants could step through the hierarchy
- biodiversity offsets and biodiversity compensation are to be 'considered' or 'provided'
- there needs to be a clearer connection between the effects management hierarchy and how it applies
- the NPSIB aligns with the NPS-FM.

Analysis

In principle, the effects hierarchy was supported or partially supported by most submitters. We consider the effects management hierarchy facilitates a well understood, consistent and robust approach to the management of adverse effects on indigenous biodiversity. However, we have recommended some amendments to ensure the effects management hierarchy reflects best practice and is both workable and sufficiently rigorous to protect and maintain indigenous biodiversity.

Amend order and terms of effects management hierarchy

Greater Wellington Regional Council noted that international best practice and the New Zealand Government guidance[36] set out the hierarchy in the order of 'avoid – minimise – remedy – offset – compensate' instead of 'avoid – remedy – mitigate – offset – compensate'. It

[36] Department of Conservation. 2014. *Guidance on good practice biodiversity offsetting in New Zealand*. Wellington: Department of Conservation.

prefers the first order because it encourages applicants to reduce the severity of adverse effects before considering actions to redress. The word 'mitigate' can also have a range of meanings, including in practice offsetting, which can cause confusion. We acknowledge the hierarchy is set out as 'avoid – minimise – remedy – offset – compensate' in international best practice for biodiversity management (the international Business and Biodiversity Offsets Programme (BBOP))[37] and the New Zealand Government guidance. They state projects affecting indigenous biodiversity should explore all alternatives first, then avoidance through careful design, then mitigation by minimising the impacts of the projects on biodiversity, then on-site rehabilitation and restoration (remediation), then offsetting to address the residual impacts. Compensation is used last to address any residual (remaining) impacts if appropriate.

Under the RMA, the terms 'avoid' and 'remedy' have the same definitions as in the international BBOP, and 'mitigate' is similar to the BBOP concept of 'minimisation'. Under section 5(c) of the RMA, adverse effects are required to be avoided, remedied or mitigated, with case law indicating no hierarchy. However, policy statements and plans can express hierarchies.[38]

The effects management hierarchy we consulted on originated from the Local Government New Zealand (LGNZ) guidance on offsetting under the RMA.[39] This guidance acknowledges emphasis is placed on minimisation before remediation internationally. However, the intent of the guidance was to be consistent with the RMA, inferring the RMA expresses a hierarchy of terms.

We consider amending the hierarchy to 'avoid – minimise – remedy – biodiversity offset – biodiversity compensation' is preferable because it:

- will align with international best practice, the New Zealand Government guidance and the Environment Institute of Australia and New Zealand's ecological impact assessment guidelines[40]
- makes ecological sense to require the minimisation of adverse effects (making effects as small as possible) before requiring remediation (rehabilitating, restoring or restating something after the impact has occurred)
- reduces risks to indigenous biodiversity by reducing the severity of an adverse effect before considering actions to redress the damage after an adverse effect has occurred
- should ensure a more robust evaluation of each step in the hierarchy in resource management consent applications. The presumed order of 'avoid – remedy – mitigate' has resulted in 'remedy' actions often being forgotten or lumped together with 'mitigate', or 'mitigate' used as a catchall for all steps of the effects management hierarchy, including 'offsetting' and 'compensation' (for example, when applicants refer to a 'mitigation package' or the 'mitigation hierarchy')

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37 Business and Biodiversity Offsets Programme. 2018. *Working for Biodiversity Net Gain: An overview of the business and biodiversity offsets programme (BBOP) 2004–2018*. Washington DC: BBOP.

38 *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38.

39 Maseyk F, Ussher G, Kessels G, Christensen M, Brown M. 2018. *Biodiversity offsetting under the Resource Management Act: A guidance document*. Report prepared for the Biodiversity Working Group. Wellington: Local Government New Zealand.

40 Roper-Lindsay J, Fuller SA, Hooson S, Sanders MD, Ussher GT. 2018. *Ecological Impact Assessment. EIANZ Guidelines for Use in New Zealand: Terrestrial and freshwater ecosystems.* 2nd edition. Melbourne: EIANZ.

- is clearer for people to understand. ‘Minimise’ is a much more straightforward and non-technical term than ‘mitigate’, and it is easier for people to understand moving from ‘avoid’ (do no harm) to ‘minimise’ (reduce the harm) to ‘remedy’ (repair the harm)
- aligns with the NPS-FM, which was changed following consultation to include a revised effects management hierarchy of ‘avoid – minimise – remedy – offset – compensation’
- aligns more closely with the effects management framework proposed in the NBE Bill.

Amending the hierarchy for these reasons results in a more robust effects management process and better outcomes for indigenous biodiversity. It also gives substance to Part 2 of the RMA, making it appropriate and justifiable. We also consider an amendment based on a clear rationale and supported by guidance will ensure correct interpretation.

We did not find any impediment to amending the order and terms of the hierarchy. However, some initial difficulty with a change from the presumed hierarchy may arise. Practitioners will want to understand the reasons for the change and the implications for implementation. There will also be a lack of consistency with the wording of some existing resource management plans already including provisions using an ‘avoid – remedy – mitigate’ hierarchy.

Removing the term ‘mitigate’ may also result in some initial confusion, given it is used in section 5(c) of the RMA and has a long history in resource management plans. We considered leaving this term in the hierarchy (in addition to ‘minimise’) but determined this would not achieve the clarity and consistency with best practice being sought.

The presumed hierarchy is already implemented variably. Regardless of the approach taken, guidance and training will be needed to ensure the effects management hierarchy is used appropriately. We anticipate no or minimal further costs to central government in revising the hierarchy.

The proposed NPSIB and other recently gazetted national direction already require councils to update their plans. We do not consider this change will lead to significantly more effort, cost or complexity.

Retain the effects management hierarchy over an outcomes-based approach

Several business/industry submitters considered because the RMA does not establish a hierarchy, there is no basis for an NPS to do so and an outcomes-based approach should be adopted instead. We disagree. There is no impediment to policy statements and plans being able to express a hierarchy (for example, the NPS-FM).

A few submitters indicated a preference for an outcomes-based approach rather than the effects management hierarchy in the implementation requirements. We have used an outcomes-based approach through the objectives but consider the effects management hierarchy is favourable in the implementation requirements, as it provides clear direction and certainty on what is expected, is widely accepted best practice and is important for protecting indigenous biodiversity. The impacts or loss of indigenous biodiversity increase the further you go down the hierarchy. An outcomes-based approach, although flexible, lacks transparency, promotes negotiation on a case-by-case basis, cannot always guarantee the best results for indigenous biodiversity and provides no certainty to applicants on the process or outcomes. Therefore, we recommend the effects management hierarchy be retained. This is consistent with submitter feedback.

Amend ‘where possible’ to ‘where practicable’

A wide range of submitters commented on the effects management hierarchy requiring applicants to demonstrate compliance with each step ‘where possible’ before considering the next step. This approach was supported by environmental groups and organisations. The phrase ‘where possible’ was chosen over ‘where practicable’ to ensure applicants adequately considered each step of the hierarchy. We considered ‘where practicable’ to be weaker and considered, in practice, it would result in less avoidance than is possible, leaving submitters on a consent to advocate for the appropriate level of management. This can be a lengthy and adversarial process leading to appeals, with associated costs and project delays.

Our intent is to ensure each step of the effects management hierarchy is adequately and robustly considered, given each subsequent step carries a greater risk for indigenous biodiversity.

However, we acknowledge submitter concerns that ‘where possible’ could prevent movement to the next step of the hierarchy, and the burden of proof needed may result in smaller projects being abandoned with consequential effects (be they negative or positive) on communities and wellbeing.

In line with the NPS-FM, we considered the interpretations of ‘where practicable’ and ‘where reasonably possible’. The ordinary dictionary meaning of the words showed ‘possible’ means ‘capable of existing or happening; that may be managed, achieved’, but ‘practicable’ means ‘able to be done or put into practice successfully’.[41] The advice determined ‘where possible’ is a strong direction not allowing for much consideration beyond what can be physically or actually done. ‘Where practicable’ weighs the relevant circumstances, state of knowledge, means available and costs when determining the feasibility of what can be done.

There is no impediment to using ‘reasonably possible’, but case law establishes little difference between ‘reasonably possible’ and ‘possible’, as ‘reasonably’ can be implied. Therefore, we considered adding ‘reasonably’ before ‘possible’ would not change how the effects management hierarchy is implemented.

We recommend replacing ‘possible’ with ‘practicable’, for the ‘avoid’, ‘minimise’ and ‘remedy’ steps of the hierarchy, as the intent is to allow consent applicants to consider each step of the hierarchy. However, we felt it appropriate to keep the more stringent test of ‘where possible’ for offsetting and compensation, to ensure the proof of evidence is much higher. This is due to the scale of impacts on and potential losses of indigenous biodiversity the ‘offsetting’ and ‘compensation’ steps potentially allow for.

We are reassured the term ‘practicable’ has an established framework around it for what councils need to consider for each step. The recommendation for replacing ‘possible’ with ‘practicable’ is contingent on a requirement to demonstrate the effects management hierarchy as, in the absence of this, ‘practicable’ becomes weak. So, we recommend a requirement is included to ensure proposals needing to apply the effects management hierarchy are not granted consent unless:

- the applicants have demonstrated how each step of the hierarchy has been applied
- if offsetting or compensation is needed, the principles in Appendices 3 and 4 of the proposed NPSIB are complied with. In accordance with expert advice from a DOC ecologist, the requirement should be that:

[41] Definition taken from the *Concise Oxford English Dictionary*.

- the four principles in Appendix 3 relating to ‘net gain’, ‘additionality’, ‘leakage’ and ‘long-term outcomes’ must be complied with in every case
- the four principles in Appendix 4 about ‘scale of biodiversity compensation’, ‘additionality’, ‘leakage’ and ‘long-term outcomes’ must be complied with in every case
- all other principles in Appendices 3 and 4 must be considered.

Submitters queried what ‘demonstrably’ meant. One submitter stated, “It is unclear to what extent, if any, the addition of ‘demonstrably’ alters the application of the effects management hierarchy”. We agree that ‘demonstrably’ adds little clarity to the clause and could be removed, especially considering the above proposal to require the steps to be demonstrated. However, to make it clear that each step needs to be addressed, and to guarantee a robust consideration of each step in turn, we recommend ‘then’ be inserted at the end of each line to denote a hierarchy. This will ensure each step is addressed before a move on to the next, and the rationale for the rejection of each step is clearly shown to be practical or possible.

Consideration of biodiversity offsetting and biodiversity compensation

The effects management hierarchy we consulted on required biodiversity offsetting to be considered and, if not possible, biodiversity compensation. One submitter noted ‘considered’ is not in line with ‘no net loss’ (now net gain), which is required by biodiversity offsets, and the wording should be tightened. Other submitters wanted a lighter alternative to ‘may be considered’.

The intent is for consent applicants to use Appendix 3 of the proposed NPSIB to determine if a biodiversity offset is possible before considering biodiversity compensation measures as per Appendix 4.

In the context of the NPS-FM, the effects management hierarchy requires aquatic offsetting to be ‘provided where possible’ and, if this is not possible, aquatic compensation to then be ‘provided’. The strength of this wording is also considered appropriate for the NPSIB, to ensure it aligns with other guidance and the rigorous frameworks that apply when biodiversity offsets and biodiversity compensation are used.

Additional step at the end of the effects management hierarchy

We recommend amending the effects management hierarchy definition to include an additional final step. This is based on the final NPS-FM effects management hierarchy definition, which includes the final step ‘If aquatic compensation is not appropriate, the activity itself is avoided’. The intent of this is to close the loop and ensure activities can still be declined. During its exposure draft process, the hydro-electricity sector was concerned this could default all activities to have a prohibited activity status. Federated Farmers noted the additional step represents a shift from the RMA and would likely result in significant litigation.

We agree with the intent behind including the additional step and recommend it reads, ‘If biodiversity compensation is not appropriate, the activity itself is avoided’. This additional step is about the activity itself not going ahead if residual effects cannot be compensated for or compensation is found to be not appropriate.

Recommendations and decisions

Recommendations for the effects management hierarchy

8a) Revise the effects management hierarchy to 'avoid – minimise – remedy – biodiversity offset – biodiversity compensation'.

8b) Replace 'possible' with 'practicable' for subclauses 1.5(4)(a), (b) and (c).

8c) Remove 'demonstrably' and include 'then' at the end of each step.

8d) Include a requirement for decision-makers to be satisfied that applicants have demonstrated how each step of the effects management hierarchy has been applied, and to ensure the principles in Appendices 3 or 4 are applied as appropriate.

8e) Add an additional final step as subclause 1.5(4)(f): 'if biodiversity compensation is not appropriate, the activity itself is avoided'.

Minister's decision

Agree

9 Biodiversity offsetting and biodiversity compensation

Proposal consulted on

Appendices 3 and 4 of the proposed NPSIB set out principles for the use of biodiversity offsets and biodiversity compensation, respectively. These principles were intended to support the appropriate use of both impact-management tools in practice, minimising risk to indigenous biodiversity.

Key issues from submissions

The key issues identified through submissions and subsequent analysis included whether:

- the definitions of biodiversity offset and biodiversity compensation are adequate and additional definitions for technical terms are given
- the level of residual adverse effects to which biodiversity offsets and biodiversity compensation apply is more than minor
- there are alternatives to Appendices 3 and 4
- a bespoke approach is needed for geothermal ecosystems
- all the principles in Appendices 3 and 4 are necessary, whether all of them need to be complied with, and whether all the principles are even able to be complied with
- the time lag period between the impacts on biodiversity occurring and offsetting and compensation measures coming to fruition can be extended
- offsetting and compensation outcomes should be maintained in the longer term
- tangata whenua, other stakeholders and the public are clearly differentiated
- the principles in Appendices 3 and 4 need minor amendments for clarity and workability
- Appendices 3 and 4 are aligned with the NPS-FM and national and international best practice guidance.

Analysis

Definitions to be improved

The definitions of 'biodiversity offset' and 'biodiversity compensation' were generally well supported by submitters. However, one submitter suggested amending both definitions to remove the word 'compensate' and replace it with the word 'redress' to avoid confusion. We recommend adopting this suggestion within offsetting definition as the current language is circular. Another submitter recommended amending both definitions to link them more clearly with the effects management hierarchy definition. The definitions used for offsetting and compensation are consistent with the wording used in the effects management hierarchy and Appendices 3 and 4. One submitter pointed out it is clearer to say 'effects on biodiversity' instead of 'biodiversity effects' in the biodiversity compensation definition. We agree and recommend minor amendments be made to ensure consistent wording within the NPSIB and to align wording with the NPS-FM and national and international best practice guidance on offsetting and compensation.

Submitters – in particular, local government and planning and ecological professionals – commented that some of the terms used in Appendices 3 and 4 were not well defined, and suggested adding guidance notes or definitions to clarify what is meant by irreplaceability, vulnerability, like-for-like and leakage. In response to submitters' requests for more clarity, we recommend including a glossary of uncommon ecological terms used in the technical appendices.

Level of residual adverse effect should be 'more than minor'

Biodiversity offsets and biodiversity compensation are intended to apply to residual adverse effects after steps to avoid, minimise and remedy have been sequentially applied. This ensures the remaining residual adverse effects are as small as possible – and in turn biodiversity offsets and biodiversity compensation costs are minimised.

Before the initial public consultation, we had not concluded what level of residual adverse effect should trigger the requirement to consider biodiversity offsets and biodiversity compensation. So we set out three options in the discussion document. In total, 26 per cent of submitters commented that they preferred more than minor residual adverse effects to be subject to biodiversity offsets and biodiversity compensation, 46 per cent preferred all residual adverse effects, and 18 per cent preferred an alternative. The remaining submitters did not have a preference. Although most submitters preferred the second option, we recommend the level be set at 'more than minor'. This threshold aligns with the RMA and the threshold around which best practice has developed, as well as the intent of the New Zealand Government guidance and international best practice.

'All residual' came from an interpretation of recent case law with respect to the wording of an RPS,[42] where the drafting accepted by the Court did not state a level of residual adverse effect but simply referred to 'residual adverse effects' generally. Since an NPS is a higher-order planning instrument, there is no legal risk of the proposed NPSIB deciding a different level of residual adverse effect.

Matters applying to Appendix 3 and Appendix 4 of the proposed NPSIB

Preamble and 'musts and shoulds'

Some submitters raised concerns that the principles read as a set of standards, requirements or criteria rather than principles. They suggested changes such as: referring to them as criteria; changing the preambles to express them as principles; and describing them as the considerations or standards expected of an offset or compensation proposal. We agree the principles outline what is expected of an offsetting or compensation proposal but do not agree they are considerations. The term 'considerations' implies there is a choice to consider them or not, which would weaken the design and success of compensation proposals.

Several submitters on the exposure draft also commented that complying with the principles was not always appropriate or achievable. Further discussions with DOC have indicated there are six matters that must be considered in all instances for a proposal to be acceptable as a biodiversity offset or compensation. The other principles should be applied as relevant to the proposals (section 8 of Part B, above, outlines this in detail). We recommend that the preambles are simplified to indicate that these principles apply to offsetting and compensation

[42] *Oceana Gold v Otago Regional Council* [2020] NZHC 436.

measures for mitigating adverse effects on indigenous biodiversity under the effects management hierarchy, and that reference to framework is removed.

Submitters also noted the need for guidance on interpretation. We do consider that a specific guidance document should be developed alongside the effects management hierarchy and Appendices 3 and 4.

Appendix 3: Biodiversity offsetting

Most submitters supported, or somewhat supported, the proposed principles for biodiversity offsets set out in Appendix 3 of the proposed NPSIB. Therefore, we recommend the principles are retained, with amendments in response to submissions and for workability. We also recommend alignment with other national direction (such as the NPS-FM) and guidance as it supports the appropriate use of biodiversity offsets and reflects best practice.[43]

Alternatives

One-quarter of submitters opposed Appendix 3. They primarily thought biodiversity offsets should not be used as impact-management tools, as they pose too great a risk to indigenous biodiversity. A few submitters, who generally agreed with biodiversity offsetting but did not support Appendix 3, proposed alternatives. Some industry submitters preferred guidance or the BCG's approach, which they considered to be simpler and more practical. The West Coast councils submitted a different framework of criteria – essentially a simplified, condensed list of the same principles.

We do not consider it appropriate to remove biodiversity offsets from the scope of the proposed NPSIB, or to rely on existing guidance, or to revert to the BCG's framework for biodiversity offsets. The need for a regulatory framework to support the consistent and appropriate use of biodiversity offsets has long been identified.[44] Offsets are already an impact-management tool under the RMA but are often used inconsistently and inappropriately, resulting in the loss of indigenous biodiversity. The BCG's framework was improved to reflect existing best practice both nationally and internationally. We consider Appendix 3 (with the amendments proposed) more closely aligns with best practice and, given the degree of support and the level of certainty and transparency it will give to decision-making, is important to retain.

One submitter suggested combining Appendices 3 and 4. We do not recommend this because biodiversity offsets and biodiversity compensation are often confused in practice. Distinguishing them as two separate tools, using two appendices, supports clarity and good practice, even if many components appear similar.

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[43] Maseyk F, Ussher G, Kessels G, Christensen M, Brown M. 2018. *Biodiversity offsetting under the Resource Management Act: A guidance document*. Report prepared for the Biodiversity Working Group. Wellington: Local Government New Zealand; Department of Conservation. 2014. *Guidance on good practice biodiversity offsetting in New Zealand*. Wellington: Department of Conservation; Business and Biodiversity Offsets Programme. 2018. *Working for Biodiversity Net Gain: An overview of the business and biodiversity offsets programme (BBOP) 2004–2018*. Washington DC: BBOP.

[44] Brown MA. 2016. *Pathways to Prosperity: Safeguarding biodiversity in development*. Wellington: Environmental Defence Society Incorporated.

Strategic considerations

A few submitters suggested amendments to ensure biodiversity offsets would be strategic, for example the use of multipliers to counter uncertainty, the alignment of offsets with restoration priorities and Predator Free 2050 goals, and the creation of biodiversity credits. We consider the first two matters are best dealt with through accompanying guidance. Work is being undertaken to develop biodiversity credit initiatives/incentives schemes in Aotearoa, but these are still early in their development.

Some submitters considered the focus of biodiversity offsets should be on a net gain outcome, given the potential for uncertain outcomes from offsetting. On the other hand, some industry and primary production submitters considered net loss should be the focus, as net gain is unachievable. The initial draft of the NPSIB required a 'no net loss and preferably a net gain' outcome. We consider a net gain outcome is much stronger than 'no net loss' and aligns with the recommended NPSIB objective of at least no overall loss. Aiming for net gain incorporates precautions by addressing the uncertainty that comes with gains achieved through biodiversity offsets. We are aware the NPS-FM aims for 'no net loss and preferably a net gain', but we do not think this should constrain the NPSIB from setting a higher bar, for the following reasons.

- Freshwater and terrestrial ecosystem components tend to be addressed separately through the consenting process.
- SNAs represent the most significant, vulnerable, irreplaceable or rarest areas of indigenous biodiversity, identified through a stringent process using the criteria set out in Appendix 1 of the proposed NPSIB. To justify their loss, there need to be measurable gains.

We consider the net gain approach is feasible under the RMA, given we are recommending biodiversity offsets apply to more than minor adverse effects. The net gain approach does not dictate a no-adverse-effects approach.

Some energy generators were concerned the principles could not be put in place alongside the National Policy Statement for Renewable Electricity Generation (NPS-REG).[45] We do not consider this to be the case. Appendix 3 of the proposed NPSIB simply defines the parameters for a biodiversity offset, rather than preventing biodiversity offsets being proposed. However, to ensure a consistent approach to renewable electricity generation and electricity transmission to support the move to zero carbon, we propose changes, as outlined in section 12 of Part B, below.

Principle 1 – Adherence to mitigation hierarchy

Some business/industry submitters considered this definition unnecessarily repeated the effects management hierarchy. Others considered it should be removed to enable flexible management. A couple of submitters suggested minor drafting changes.

We believe the principle should be retained, as it is integral to biodiversity offsetting and reflects best practice. We recommend, however, that it be updated to 'Adherence to effects management hierarchy' and that the unnecessary repetition, that it applies only to residual indigenous biodiversity impacts, be removed. This simplification will address some submitter concerns.

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[45] National Policy Statement for Renewable Electricity Generation 2011.

Principle 2 – Limits to offsetting

This principle, together with the principle on limits to biodiversity compensation (Appendix 4 of the proposed NPSIB), received the most feedback in submissions. Submitters generally considered it integral to the appropriate use of biodiversity offsetting, but wanted clarifications, amendments, additions or alternative wording. We consider guidance will help to address many of the concerns and including a glossary will give more clarity.

Some submitters wanted the principles to clarify when biodiversity offsetting is not acceptable. We consider the principle already articulates this in items (i)–(iii), which cover the key reasons for an offset not being appropriate, although the list is not exhaustive. The technical advice we have received is the design process will determine if a biodiversity offset is possible. The more irreplaceable or vulnerable the indigenous biodiversity, the greater the burden of proof required for an offset to demonstrate net gain.

We recommend some minor drafting amendments to this principle to help clarify how it applies. We recommend the title be updated to 'When biodiversity offsetting is not appropriate'.

Other submitters (mainly from industry) considered the principle unnecessarily stringent. One thought it went against the effects management hierarchy approach. The exceptions (clause 3.9) provide scope for all the adverse effects of certain types of subdivision land use or development to be mitigated under the effects management hierarchy. This principle allows scope for council to dismiss proposals for offsetting where:

- biodiversity offsetting is inappropriate
- there is insufficient information
- offsetting is not achievable
- it involves impacts on irreplaceable indigenous biodiversity.

One submitter considered "… a proposed offset must provide an assessment of these limits that supports its success" as unclear. We believe this is addressed by the amendment to 'Managing adverse effects on SNAs of new subdivision use, and development' in the NPSIB. This requires applicants to show how each step of the effects management hierarchy will be applied. It also allows the burden of proof to correspond to the significance of the impact. If the conditions of the effects management hierarchy are not met, the activity itself is avoided.

Several business/industry submitters wanted 'socially acceptable options' to be clarified or removed from Principle 2(ii) on the basis they considered it ambiguous, already covered by the consent process and not necessarily linked to optimum ecological outcomes. We support its removal as we believe it is adequately covered through the principle covering 'Tangata whenua and stakeholder participation'. Another submitter wanted (ii) to be removed entirely on the basis that if it is not technically feasible it should not be called an offset. We do not recommend this as (ii) has an integral role in determining if an offset can take place. It needs to be explicit, or it will compromise outcomes for indigenous biodiversity.

An iwi/Māori submitter considered the limits should include that the offset must not degrade the mauri of an area or taonga. We believe the degradation of mauri can be incorporated as an offset principle where relevant to a specific ecological feature, through the principle on 'Science and mātauranga Māori'. It is not feasible to apply an explicit loss/gain calculation to the spiritual element of mauri, although such a calculation may be relevant to the biodiversity attributes underpinning mauri.

Three iwi/Māori submitters commented that the process of considering limits should include expert advice from tangata whenua. We determined this is already incorporated into biodiversity offset design as part of the principles on 'Science and mātauranga Māori' and 'Tangata whenua and stakeholder participation'. It is also incorporated in the clause requiring local authorities to 'involve tangata whenua as partners in managing indigenous biodiversity'.

A few business/industry submitters proposed alternative limits, suggesting these could replace the need for the High/Medium split for SNAs. The merits of this effects management approach are discussed in section 12 of Part B, below. We do not recommend the limits suggested by the submitters, as they do not capture threatened ecosystems. Our technical advice is the limits suggested by submitters are unduly narrow. Instead, we recommend guidance be developed to further define the indigenous biodiversity that is considered irreplaceable or vulnerable.

A submitter considered that Principle 2(iii) unnecessarily repeated the precautionary approach and noted risk and uncertainty were already factored into biodiversity offset models. Another noted it did not fully reflect the precautionary principle and should read 'significantly adverse and irreversible'. We believe it is important to retain (iii) and to amend it to include 'or irreversible'.

Principle 3 – No net loss and preferably a net gain

As per the recommendation under 'Strategic considerations', we propose revising this principle to focus on a net gain outcome. We recommend Principle 3 be updated to 'Net gain'.

Some submitters on the exposure draft of the NPSIB queried the requirement for net gain to be demonstrated by a like-for-like quantitative loss/gain calculation. Technical advice is that the quantitative component is important, especially to council decision-makers, to provide rigour to the ecological advice provided by applicants. So, decisions are not being made based on the opinions of single ecologists. However, more clarity around the definition of like-for-like would help with the workability of this clause, as would some minor redrafting of the principle. Therefore, we recommend the intent of the proposed clause as outlined in the exposure draft remains, with minor amendments to wording, including an explanation of like-for-like in the glossary.

Principle 4 – Additionality

One submitter regarded the reference to displacing activities confusing in the consideration of additionality. They believed it confused additionality with leakage and recommended a standalone principle for leakage. Leakage is the shifting of an adverse residual effect to another location. The wording of the principle reflects the international BBOP guidance.[46] In some contexts it makes sense to combine leakage and additionality, however, we agree with the submitter it would be clearer to separate leakage from additionality.

There were comments from submitters that there was no difference between net gain and additionality. We disagree, as net gain is a calculation to ensure what is being provided as an offset exceeds that which is lost. Additionality ensures the offset gains achieve indigenous biodiversity outcomes above and beyond results that would have occurred if the offset had not taken place.

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[46] Business and Biodiversity Offsets Programme. 2018. *Working for Biodiversity Net Gain: An overview of the business and biodiversity offsets programme (BBOP) 2004–2018*. Washington DC: BBOP.

We recommend the inclusion of a new leakage principle and amendments to the additionality principle to remove references to leakage, a simplification of the wording and alignment with the NPS-FM.

Principle 5 – Like-for-like and Principle 9 – Trading up

Several submitters considered Principles 5 and 9 conflicted with each other, as trading up involves like-for-unlike trades. We acknowledge this conflict. Our recommendation is to remove the trading-up principle from Appendix 3 of the proposed NPSIB. Trading up is inappropriate in an offsetting context as it is a form of biodiversity compensation.

Submitters raised questions about how Principle 5 related to Principles 3 and 9. Some submitters considered a more appropriate principle would be ecological equivalence as set out in the LGNZ guidance. We recommend removing the like-for-like principle from Appendix 3 and incorporating it into Principle 3 'No net loss' (now 'net gain'), using ecological equivalence and loss/gain quantification, but retaining the concept of like-for-like in ecological equivalence. Using like-for-like ensures the prevention of offsets trading different elements based on an argument they are ecologically equivalent (for example, ecosystem services provided by an exotic-dominated wetland for one dominated by indigenous vegetation). We also recommend providing a definition of like-for-like in response to submissions on the exposure draft.

Principle 6 – Landscape context

Some submitters wanted greater specificity on the need for offset actions to occur near the development or within or immediately adjacent to the affected SNA, with a range of wording suggestions. Others expressed practicality issues in being required to produce an offset in the same ecological district as the development. We believe the intent of this principle is adequately expressed in that it supports the best ecological outcome, is pragmatic and is consistent with maintaining mauri. However, some minor drafting changes would improve clarity.

Principle 7 – Long-term outcomes

Submissions on this principle primarily sought clarification on how long-term outcomes can be guaranteed. Local government raised concerns about effects management in perpetuity and how that can be overseen by councils. The NPS-FM addresses this by requiring information on the longer-term issues of management, monitoring and funding. We recommend adding to the provision to align it with the NPS-FM.

Principle 8 – Time lags

This principle requires the period (referred to as a time lag) between impacts on indigenous biodiversity and gains in indigenous biodiversity at the offset site to be achieved in the consent period. A wide range of submitters requested the period be extended to 35 years, to align with other government guidance. We consider there are circumstances where this would be appropriate and should be left to the discretion of the consenting authority. Therefore, we recommend the principle provides for an extension of timeframes to 35 years when appropriate.

Principle 10 – Offsets in advance

This principle was not widely supported. One submitter suggested it should be removed as it disincentivised restoration work, unless linked to development, and there is no legal certainty or assurance it will be considered. Another sought clarification on how offsets in advance would be considered during a consent application. One council felt further direction

was needed on the degree of proof required, such as encumbrance on a title or a requirement to alert the council at the time of the establishment of an offset. Some considered the principle premature given the lack of institutional arrangements necessary to manage a biodiversity bank. There was acknowledgement, however, of the benefit offsets in advance would have for indigenous biodiversity.

We recommend this principle be removed from Appendix 3 of the proposed NPSIB, given the lack of institutional frameworks needed to make it work. A mechanism for achieving an offset, rather than an offsetting principle, could be more clearly dealt with in guidance.

Principle 11 – Proposing a biodiversity offset

Those who commented on this principle felt it was unclear and proposing a biodiversity offset required much more than just a biodiversity offset management plan. One suggestion was further direction for this requirement would be better placed in Principle 14 'Transparency'. One submitter suggested it would be useful to state what a biodiversity offset management plan must contain, including provisions for monitoring, reporting and adaptive management, and have a prescription for capturing the plan (and other key documentation) in resource consent conditions. They also felt it would be useful to give similar clarity on other steps in the offset design and implementation that should also be transparently documented. This would include the whole design process, the currency used for the calculation and adherence to the principles (for example, how it was to be done, performance targets, monitoring regime, adaptive responses to problems).

It is also noted there may be instances where requiring a full offsetting management plan is not equal to the size of the impact or is already provided for directly by plan provisions.

We recommend this principle be removed. It would be better dealt with as a requirement for applicants to show how they have addressed each step of the effects management hierarchy and if they have complied with the principles of offsetting under the 'Managing adverse effects on SNAs' clause.

Principle 12 – Science and mātauranga Māori

Some submitters and the Iwi Leaders Technicians recommended changes in drafting to recognise mātauranga Māori is local knowledge and might not always be provided. We acknowledge these submissions and recommend a change in drafting to '… informed by science and mātauranga Māori'.

Principle 13 – Stakeholder participation

A few submitters opposed this principle. They considered stakeholder participation as a matter covered by the notification requirements of the RMA. They felt it should not be a requirement for biodiversity offsets in all instances, particularly where the proposal is on private land or getting submitter approval could be problematic. Our technical advice indicated this principle is additional to the public notification requirements of the RMA. These tend to occur after the design of an offset, whereas this principle is about early engagement to inform offset design. The principle only requires there to be an opportunity for stakeholder participation. It does not give stakeholders a veto on offset proposals. The recommended change that councils must 'have regard' to this principle will also help in addressing concerns.

There is also a need to clearly differentiate between tangata whenua, other stakeholders and the public. Therefore, we recommend separately listing tangata whenua.

Appendix 4: Biodiversity compensation

Most submitters supported or somewhat supported the proposed principles for biodiversity compensation set out in Appendix 4 of the proposed NPSIB. Therefore, we recommend the principles be retained with minor amendments (in response to submissions and to ensure workability and alignment with other national guidance), as it supports the appropriate use of biodiversity compensation and reflects best practice.[47]

Specific amendments sought to Appendix 4 closely reflect those sought to Appendix 3.

For the following principles from the proposed NPSIB (4 – Additionality, 6 – Long-term outcomes, 7 – Time lags, 10 – Biodiversity compensation *in advance*, 11 – Science and mātauranga Māori, 12 – Stakeholder participation), please see the commentary above for Appendix 3. We recommend making equivalent changes to Appendix 4.

Alternatives

One-quarter of submitters opposed the Appendix 4 principles, primarily being of the view that biodiversity compensation should not be used as an impact-management tool, as it poses too great a risk for indigenous biodiversity. It was noted if the objective of the NPSIB is to maintain indigenous biodiversity, then biodiversity compensation is not appropriate. Some environmental groups and iwi submitters considered if biodiversity offsets were not possible, adverse effects or the activity should be avoided. A few business/industry submitters considered the principles too stringent and a barrier to net-beneficial approaches to addressing the impacts of projects thus far endorsed by the Environment Court.

Some submitters, who supported biodiversity compensation, did not support Appendix 4, and proposed alternatives. Some industry submitters preferred the flexibility of guidance, but the West Coast councils proposed a different framework of criteria that could be combined with Appendix 3, which was essentially a simplified and condensed list of the same principles based on the *Oceana Gold v Otago Regional Council* decision.[48]

We do not consider it appropriate to remove biodiversity compensation from the scope of the NPSIB or to rely on guidance. The need for a regulatory framework to support the consistent and appropriate use of biodiversity compensation and minimise the risks to indigenous biodiversity has long been identified.[49] Compensation is already an impact-management tool under the RMA. Without a regulatory framework, the outcomes for indigenous biodiversity are less than optimal. We consider the proposed Appendix 4 aligns with best practice, so, given the degree of support, it is important to retain the provision.

Another submitter questioned the worth of combining Appendices 3 and 4. We do not support this, as biodiversity offsets and biodiversity compensation have often been confused in

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[47] Maseyk F, Ussher G, Kessels G, Christensen M, Brown M. 2018. *Biodiversity offsetting under the Resource Management Act: A guidance document*. Report prepared for the Biodiversity Working Group. Wellington: Local Government New Zealand; Department of Conservation. 2014. *Guidance on good practice biodiversity offsetting in New Zealand*. Wellington: Department of Conservation; Business and Biodiversity Offsets Programme. 2018. *Working for Biodiversity Net Gain: An overview of the business and biodiversity offsets programme (BBOP) 2004–2018*. Washington DC: BBOP.

[48] *Oceana Gold v Otago Regional Council* [2020] NZHC 436.

[49] Brown MA. 2016. *Pathways to Prosperity: Safeguarding biodiversity in development*. Wellington: Environmental Defence Society Incorporated.

practice. Distinguishing them as two separate tools using two appendices supports clarity and good practice.

Strategic considerations

A few submitters suggested amendments to ensure biodiversity compensation is strategic, such as the use of magnifying factors to counter uncertainty and the alignment of compensation proposals with restoration priorities and Predator Free 2050 goals. We consider these matters are best dealt with through accompanying guidance.

One submitter wanted it clarified that a combination of biodiversity offsets and compensation could be used. We consider this is clear – compensation is only applied to the residual effects once impacts have been avoided, minimised, remedied and offset. The amendments to the effects management hierarchy will help to show this is a step-by-step process. Another submitter was concerned the principles could not be given effect alongside the NPS-REG. This is not the case. Appendix 4 simply defines the parameters of what constitutes a biodiversity compensation proposal. It does not prevent biodiversity compensation being proposed. This matter is discussed further and clarifying amendments are proposed in section 12 of Part B, below.

Principle 1 – Adherence to mitigation hierarchy

Some business/industry submitters considered this definition unnecessarily repeated the effects management hierarchy, and others considered it should be removed to enable flexible management. A couple of submitters suggested minor wording changes. We believe the principle should be retained, as it is integral to biodiversity compensation and reflects best practice. We recommend, however, it be updated to 'Adherence to effects management hierarchy' and remove the unnecessary repetition that it applies only to residential indigenous biodiversity effects. This simplification will address submitter concerns.

Principle 2 – Limits to biodiversity compensation

This principle, together with the principle on limits to offsetting (Appendix 3 of the proposed NPSIB), received the most feedback through submissions. We consider guidance will help to address many of the submitters' concerns and including a glossary will give more clarity.

A few submitters preferred the specificity of the limits to biodiversity compensation set out in the *Oceana Gold v Otago Regional Council* decision.[50] Other submitters considered those limits unworkable – particularly that the loss of a single individual of a particular species could trigger a limit, resulting in compensation not being appropriate and applications being refused. The need for some form of limit was recognised, however. Since the NPSIB is a higher-order planning instrument than the Otago RPS, there is no legal impediment to adopting different limits in the NPSIB.

We consider the NPSIB limits are preferable, particularly in Principle 2(b) and (c), which are not limits set in the *Oceana* case. We believe the *Oceana* limits may be too restrictive – they require residual effects cannot remove or reduce the viability of any habitat of a species classified as Threatened or At Risk under the New Zealand Threat Classification System. They may, therefore, be triggered through the loss of a single individual. We consider the terms 'irreplaceable and vulnerable' preferable, as they are broad and encompass any species or

[50] *Oceana Gold v Otago Regional Council* [2020] NZHC 436.

ecosystem in decline or at risk of decline. Definitions will help with the interpretation of these terms.

A few business/industry submitters wanted reassurance that Principle 2 would not prevent the use of biodiversity compensation. One submitter wanted it made explicit that, if the limits were triggered, biodiversity compensation would be inappropriate. The principle states a decision-maker has discretion to determine if a proposal for biodiversity compensation is appropriate, using matters such as those listed in Principle 2(a)–(c) to inform their decision. It is not the intent of the principle to provide an absolute limit. Essentially, the more irreplaceable or vulnerable the indigenous biodiversity, the higher the burden of proof required for a biodiversity compensation proposal.

We recommend some minor drafting amendments to this principle to help clarify how it applies. We also recommend the title be updated to 'When biodiversity offsetting is not appropriate'.

Several business/industry submitters wanted 'socially acceptable options' to be clarified or removed from Principle 2(b) on the basis they considered it ambiguous, already covered by the consent process and not necessarily linked to optimum ecological outcomes. We support its removal as we believe it is covered through the principle on tangata whenua and stakeholder participation.

A couple of business/industry submitters wanted Principle 2(c) to be broadened to include the potential benefits of undertaking research or trials. We do not consider this appropriate, as it would be an out-of-kind exchange. Research and trials may be part of the design of a compensatory measure to determine the success of the measure.

An iwi/Māori submitter suggested the limits should include a statement that the offset must not degrade the mauri of an area or taonga. We believe the degradation of mauri can be incorporated as an offset principle, where relevant to a specific ecological feature, through the principle on 'Science and mātauranga Māori', but only if tangata whenua are able to provide an appropriate means of measuring mauri.

Three iwi/Māori submitters suggested the process of considering limits should include expert advice from tangata whenua. We determined this is already incorporated into biodiversity offset design as part of the principles of 'Science and mātauranga Māori' and 'Tangata whenua and stakeholder participation', and clause 3.3 requiring local authorities to 'involve tangata whenua as partners in managing indigenous biodiversity'.

Principle 3 – Scale of biodiversity compensation

We recommend amending this principle to require the positive effects for indigenous biodiversity achieved by biodiversity compensation to outweigh adverse effects on indigenous biodiversity. Some infrastructure providers requested the removal of 'outweigh adverse effects on indigenous biodiversity' as compensation is not a 'no net loss' approach. We consider the change from 'proportionate' to 'outweigh' as consistent with the change in the target for biodiversity offsetting from no net loss to net gain. It incorporates precaution, which is appropriate given the uncertainty that comes with gains achieved through biodiversity compensation. We also recommend a clarification this applies to situations where indigenous species rely on indigenous species for their survival.

Principle 8 – Trading up

Only minor clarifications were sought by submitters. We consider these can be addressed through guidance. Given the recent changes to the threat classification by DOC, we do recommend amending species classifications to read 'Threatened or At Risk (Declining) species or to species considered vulnerable or irreplaceable'.

Principle 9 – Financial contributions

We recommend clarifying the intent of this clause so that financial contributions are considered only where there is no other effective option, and biodiversity compensation is intended to be provided as actual biodiversity gains.

Recommendations and decisions

Recommendations for Appendix 3: Biodiversity offsetting and Appendix 4: Biodiversity compensation

Definitions:

9a) Amend the biodiversity offset and compensation definitions to ensure consistent wording within the document and with other national direction.

9b) Set the level of residual adverse effects to which biodiversity offsets and biodiversity compensation apply at 'more than minor'.

9c) Add a glossary of uncommon ecological terms used in the technical appendices.

Changes to Appendix 3:

9d) Make minor drafting changes to improve clarity, and to ensure consistent wording within the document and with other national direction.

9e) Simplify the preamble to Appendix 3.

9f) Re-label Principle 1 'Adherence to mitigation hierarchy' as 'Adherence to effects management hierarchy' and make minor drafting changes for clarity.

9g) Re-label Principle 2 'Limits to offsetting' as 'When biodiversity offsetting is not appropriate', and make minor drafting amendments to this principle to help clarify how it applies.

9h) Amend Principle 3 'No net loss and preferably a net gain' to 'Net gain', and make associated amendments.

9i) Amend Principle 4 'Additionality' to simplify the wording to be consistent with other government guidance and policy.

9j) Add a new principle on 'leakage'.

9k) Delete Principles 5 'Like-for-like', 9 'Trading up', 10 'Offsets in advance' and 11 'Proposing a biodiversity offset'.

9l) Make minor word changes to Principles 6 'Landscape context', 7 'Long-term outcomes' and 14 'Transparency' to improve clarity and workability and to be consistent with other national direction (such as the NPS-FM) and best practice guidance.

9m) Amend Principle 8 'Time lags' to include 'as appropriate, a longer period (but not more than 35 years)'.

9n) Amend principle on ‘Science and mātauranga Māori’ to ‘being informed by science and mātauranga Māori’.

9o) Amend Principle 13 ‘Stakeholder participation’ to clearly differentiate between tangata whenua, other stakeholders and the public.

Changes to Appendix 4:

9p) Make minor drafting changes to improve clarity, and to ensure consistent wording within the document and with other national direction.

9q) Simplify the preamble to Appendix 4.

9r) Re-label Principle 1 ‘Adherence to mitigation hierarchy’ as ‘Adherence to effects management hierarchy’, and make minor wording amendments for clarity.

9s) Re-label the principle on ‘Limits to biodiversity compensation’ as ‘When biodiversity compensation is not appropriate’, and make minor drafting amendments to this principle to help clarify how it applies.

9t) Amend Principle 3 ‘Scale of biodiversity compensation’ to replace ‘proportionate’ with ‘outweigh’, and clarify this also applies to situations where indigenous species rely on indigenous species for their survival.

9u) Amend Principle 4 ‘Additionality’ to simplify the wording to ensure consistency with other national direction and guidance.

9v) Add a new principle on ‘leakage’.

9w) Minor word changes to Principle 5 ‘Landscape context’, 6 ‘Long-term outcomes’ and 13 ‘Transparency’ to improve clarity and workability, and to ensure consistency with national policy (especially the NPS-FM) and best practice guidance.

9x) Amend Principle 7 ‘Time lags’ to include ‘as appropriate, a longer period (but not more than 35 years)’.

9y) Amend Principle 8 ‘Trading up’ species classifications to read ‘... Threatened or At Risk (Declining) species’.

9z) Amend Principle 9 ‘Financial contributions’ to clarify they are considered only when there are no other effective options, and the contributions have to provide actual biodiversity gains.

9aa) Delete Principle 10 ‘Biodiversity compensation in advance’.

9bb) Amend Principle 13 ‘Stakeholder participation’ to clearly differentiate between tangata whenua, other stakeholders and the public.

Minister’s decision

Agree

10 Adverse effects

Proposal consulted on

Subclause 1.7(4) in the proposed NPSIB comprised a list of adverse effects on indigenous biodiversity for councils to account for when considering resource consent applications for subdivision, use and development, both within and outside SNAs. This list is not exhaustive. Councils could consider additional adverse effects at their discretion.

Key issues from submissions

The key issues identified through submissions and subsequent analysis included whether:

- subclause 1.7(4) would be more appropriate in guidance
- subclause 1.7(4) should be narrowed in scope and made more specific, or broadened to include other adverse effects
- effects thresholds could be added
- links with the rest of the NPSIB could be clarified.

Analysis

Subclause 1.7(4) has an aggregated list of adverse effects from the BCG's draft of the NPSIB. It requires consideration of specific adverse effects under different provisions to meet specific outcomes – for example, the 'within SNAs' provision requires specific adverse effects to be managed, to protect the ecological integrity of SNAs.

Subclause 1.7(4) was considered a more efficient way of giving direction to councils on the adverse effects they should take into account when considering resource consent applications. It removed a layer of duplication and fitted with the new structure of the NPSIB.

Following submission feedback and our subsequent analysis, we consider subclause 1.7(4) to be insufficiently clear for decision-makers and there is an unnecessary repetition of subclauses 3.9(1)(a) and 1.7(3). We also consider it onerous and unnecessary that the entire list needs to be considered for each resource consent application. The consideration of adverse effects will depend on the values of the SNA, the outcomes being sought and the particular subdivision, use or development application.

We considered options for ensuring the NPSIB includes the necessary direction to support desired outcomes, promotes consistency and directs an appropriate level of discretion. We believe this can be best addressed through a shift back towards the BCG's approach. Therefore, we recommend subclause 1.7(4) be removed and the consideration of adverse effects be contextualised by the outcomes sought. We also recommend the NPSIB include clear outcome statements (for example, the recommended revised policies), which are then supported by the implementation requirements. Where direction on adverse effects is critical to achieving a stated outcome, we recommend this be included in the corresponding implementation requirement.

Providing guidance alongside the NPSIB will be critical for providing examples of adverse effects for councils to consider in different situations when striving for specific outcomes, and for explaining how these should be considered using the effects management hierarchy. This

will also be relevant for the management of adverse effects on biodiversity outside SNAs, where we recommend high-level directives to maintain indigenous biodiversity.

Recommendations and decisions

Recommendations for adverse effects

10a) Remove subclause 1.7(4) from the NPSIB.

10b) Amend policies to clarify the outcomes sought.

10c) Include directions on adverse effects critical to achieving stated outcomes within relevant NPSIB Part 3 provisions as appropriate.

Minister's decision

Agree

11 Social, economic and cultural wellbeing

Proposal consulted on

The proposed NPSIB set out areas of social, economic and cultural wellbeing that local authorities must recognise when implementing the NPSIB. The intent is to recognise the maintenance of indigenous biodiversity contributes to the wellbeing of people – and people contribute to the maintenance of indigenous biodiversity.

Key issues from submissions

The key issues identified through submissions and subsequent analysis included whether:

- increased clarity can be provided on how this clause links to the rest of the NPSIB
- the clause should be strengthened or clarified with respect to the importance of protecting and enhancing indigenous biodiversity in the context of subdivision, use and development
- elements of the clause should be reframed and reprioritised
- the exercise of kaitiakitanga by tangata whenua should be provided for in a standalone clause.

Analysis

There was general support for this clause in the submissions, so we see value in retaining it. However, we recommend some amendments to strengthen, clarify, and reframe it. We also recommend it is placed near the beginning of Part 3, to help inform this part of the NPSIB.

Amend directive 'must recognise' to 'must consider'

One submitter considered the term 'must recognise' as weak in the context of the objective of the NPSIB, stating that it made the value of the provision uncertain. We agree the directive 'must recognise' creates some uncertainty as to the relative weight of the provision. Given the policy intent is that this provision will be implemented alongside other Part 3 provisions as matters to consider before developing policy and making decisions, we recommend 'must recognise' should be amended to 'must consider' or an equivalent term. This would enable the clause to be implemented alongside other Part 3 provisions.

Clarify links with rest of NPSIB

There was some confusion among submitters as to how this clause linked to the rest of the proposed NPSIB. Given the intent is for the clause to be considered when implementing the rest of the NPSIB, we consider it is better framed as a broad requirement in Part 3. We recommend creating a new subpart to frame provisions outlining approaches to implementing the NPSIB.

Strengthen and clarify aspects

There was also a call for stronger direction on the importance of protecting and enhancing indigenous biodiversity in the context of subdivision, use and development. However, we do not consider this requires amendments. The importance of protecting and enhancing indigenous biodiversity in the context of subdivision, use and development has already been articulated in other provisions (including the management of SNAs, and outside SNAs). A

direction in this provision would be inconsistent with the rest of the provision, which comprises matters that must be considered when implementing the rest of the NPSIB.

Reframe and reprioritise elements

Several landowners wanted the clause to be amended to acknowledge and prioritise non-regulatory measures and partnerships. We do not consider it appropriate to include and prioritise non-regulatory measures in this provision. This would be an implementation matter rather than a value or outcome to achieve while implementing the NPSIB. It is difficult to enforce recognition of non-regulatory measures, and the role of partnerships is already acknowledged.

Several submitters commented on the groups referred to and directed under the clause and had a desire to see these expanded. The subclauses in the proposed NPSIB referred to different groups, including people and communities, local authorities, tangata whenua and landowners. We considered the requests by submitters to refer to, or direct, other groups such as businesses, Crown agencies, land occupiers and other RMA decision-makers. However, we instead recommend a consistent and standardised approach of directing local authorities and referring to 'people and communities' as relevant, except for those subclauses where it is culturally appropriate to clarify the role of tangata whenua as kaitiaki, and to recognise the role of landowners.

There was a request for the role of landowners in the management of SNAs to be recognised. We recommend specific mentions of landowners are retained, because the concept of stewardship strongly derives from land ownership and is something submitters were strongly in favour of. For the other subclauses, all the groups and people involved, including landowners, are encapsulated by the use of 'people and communities'.

Some iwi/Māori suggested it was appropriate for 'the contribution of tangata whenua as kaitiaki' to be considered separately from the role of people and community as stewards of indigenous biodiversity. The importance of kaitiakitanga is recognised separately both in section 7(a) of the RMA and in the NPS-FM.

We agree this is appropriate and have recommended a split in the relevant subclause, so the role of tangata whenua as kaitiaki can be provided for in a standalone clause.

We also recommend some minor changes so references to people, communities and landowners as stewards, and to tangata whenua as kaitiaki, are more direct.

Recommendations and decisions

Recommendations for social, economic and cultural wellbeing

11a) Amend the directive 'must recognise' to 'must consider'.

11b) Frame the clause within a subpart of Part 3, focused on broad approaches to implementation.

11c) Make minor changes so references to relevant groups and tangata whenua are more direct.

11d) Remove specificity as to whom partnerships are between.

11e) Amend relevant subclauses to refer to ‘people and communities’ instead of specific groups.

11f) Amend the clause to recognise landowners, people and communities as stewards.

11g) Provide for the role of tangata whenua as kaitiaki in a standalone clause.

Minister’s decision

Agree

12 Managing adverse effects on SNAs

Proposal consulted on

The intent of clause 3.9 of the proposed NPSIB was to provide clear direction on effects management. This includes which adverse effects must be avoided to maintain indigenous biodiversity, and which adverse effects can be otherwise managed. It was intended to protect SNAs in a way that would still enable some new subdivision, use and development within set parameters.

Subclause 3.9(1)(a) of the proposed NPSIB sets out which adverse effects are to be avoided and managed in SNAs to protect them. This builds on advice provided to the BCG by Manaaki Whenua | Landcare Research.[51] Four adverse effects were consistently identified as key adverse effects to avoid throughout this advice. They are set out in subclause 3.9(1)(a) as:

- loss of ecosystem representation and extent
- disruption to sequences, mosaics or ecosystem function
- fragmentation or loss of buffering or connectivity within the SNA and between other indigenous habitats and ecosystems
- a reduction in population size or occupancy of threatened species using the SNA for any part of their lifecycle.

These were the environmental bottom lines. All other adverse effects were to be managed using the effects management hierarchy.

Subclauses 3.9(2) and (3) provided a consent pathway through the effects management hierarchy for specified new subdivision, use and development. These were subject to certain gateway tests and included:

- nationally significant infrastructure
- mineral and aggregate extraction
- the provision of papakāinga, marae and ancillary community facilities associated with customary activities on Māori land
- the use of Māori land in a way that will make a significant contribution to enhancing the social, cultural or economic wellbeing of tangata whenua
- a single residential dwelling, and associated infrastructure, on an existing allotment.

When a new subdivision, use or development associated with one of the activities listed above takes place in, or affects, an SNA, the adverse effects can be addressed using the effects management hierarchy (instead of having to avoid the listed adverse effects). However, this is only if the new subdivision, use or development is also functionally or operationally required to take place in that location and there are no practicable alternative locations.

Subclause 3.9(4) identified some uses or activities that could be undertaken without reference to subclause 3.9(1)(a) (the adverse effects to avoid) and the effects management hierarchy,

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[51] Walker S, Lee W, Bellingham P, Kaine G, Richardson S, Greenhalgh S, Simcock R, Brown M. 2018. *Critical factors to maintain biodiversity: What effects must be avoided, remediated or mitigated to halt biodiversity loss?* Manaaki Whenua | Landcare Research Contract Report LC3116 prepared for the Biodiversity Collaborative Group.

including development for the purpose of restoring or enhancing an SNA and for public safety, mānuka and kānuka protected due to myrtle rust and indigenous vegetation established and managed for a use other than maintaining and restoring biodiversity (for example, mānuka planted for honey or harakeke for weaving). It was anticipated that in these circumstances minimal adverse effects would occur and outcomes would be consistent with the environmental bottom lines (adverse effects to avoid) listed in subclause 3.9(1)(a).

This recognised the need to provide for activities important to New Zealanders' social, economic and cultural wellbeing.

Key issues from submissions

The key issues identified through submissions and subsequent analysis included whether:

- there should be two categories of SNA, High and Medium
- clarification is required on the breadth and intent of the provisions, particularly the adverse effects to be avoided and the scale at which they apply
- there is a need to clarify when and how the effects management hierarchy should be applied
- clarification is needed on what land uses and activities the avoidance of adverse effects and effects management hierarchy do not apply to
- the circumstances where the avoidance of adverse effects and the effects management hierarchy do not apply are sufficiently comprehensive and will result in minimal adverse effects and no perverse incentives
- it is appropriate to provide exceptions for land covered by specified biodiversity covenants to be managed under those covenants rather than through the effects management hierarchy
- the definition of and provision for 'nationally significant infrastructure' needs to be amended to align with other guidance and expanded to include other parameters including infrastructure to support housing growth areas
- a provision for mineral and aggregate extraction is appropriate, and whether further parameters or restrictions should apply, such as with respect to coal mining
- this is the appropriate mechanism to address development and use on Māori land
- providing for single residential dwellings appropriately provides for reasonable use or needs further clarification on when and how it applies
- to include additional development or land uses as exceptions
- the clause provides for the legally established uses of indigenous biodiversity
- this will restrict renewable electricity and electricity transmission infrastructure.

Analysis

Strategic changes – use of High/Medium categories for protecting SNAs

Many submitters were concerned with the proposed management of adverse effects through the division of SNAs into High and Medium value categories. The reasons for this included:

- concern most SNAs would be rated High and overly restrict land use
- a perception Medium SNAs were of lesser significance than High SNAs, and there would be pressure for SNAs to be rated as Medium instead of High
- the complexity and costs involved in councils reclassifying SNAs into High and Medium categories
- the potential for perverse effects on restoration and enhancement.

The section 32 evaluation report[52] identified concerns about the High/Medium split, and these were reflected in what we heard through submissions. These concerns included uncertainty about the number of SNAs that would be ranked as High and Medium in accordance with Appendix 2 of the proposed NPSIB. They also included uncertainty about the potential costs for certain subdivision, use and development provided for in clause 3.9 of the proposed NPSIB, and whether certain adverse effects had to be avoided and/or managed in accordance with the effects management hierarchy.

Some submitters sought the removal of SNAs that met the Medium criteria in Appendix 2. However, we disagreed with this as Medium SNAs are not of lesser significance than High SNAs and this proposal would not align with requirements under section 6(c) of the RMA or best practice. Suggestions by submitters that no adverse effects should be allowed (absolute protection of SNAs) or that subclause 3.9(1)(a) should apply to all activities, were also ruled out on the basis they did not meet the intent of the effects management framework. Neither do we consider it appropriate to revert to the BCG's attribute and outcomes-based management approach, for reasons set out in section 8 of Part B, above.

At the other end of the scale, a loosening of the avoid imperative and/or reliance on revised limits for biodiversity offsets and biodiversity compensation was considered overly permissive and inadequate for protecting SNAs and maintaining indigenous biodiversity. It is critical the adverse effects to avoid listed in subclause 3.9(1)(a) are retained, and these are well supported by evidence (see below). Relying on the last steps of the effects management hierarchy (biodiversity offsets and biodiversity compensation) presents a high risk for indigenous biodiversity, less certainty for consent applicants and high consenting costs, with a potential for consents to be declined after significant investment. It also does not align with the international approach to biodiversity offsetting or with current approaches in resource management plans or case law under section 6(c) of the RMA.

Alternatives

We explored several options including:

- retaining the High/Medium split but amending the criteria, language and provision for activities
- removing the High/Medium split and extending the use of the effects management hierarchy, extending the list of adverse effects to avoid, or relying on limits for biodiversity offsetting and biodiversity compensation
- enabling council discretion to determine a stricter management approach, including the designation of no-go areas.

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[52] Wyeth J. 2019. *National Policy Statement for Indigenous Biodiversity – Section 32 Evaluation and Cost Benefit Analysis*. Prepared for Ministry for the Environment and Department of Conservation by 4Sight Consulting and Market Economics.

We acknowledge these concerns and recommend some changes be made to the management of adverse effects on SNAs to recalibrate the balance between protection and reasonable use in a way that still maintains indigenous biodiversity. Recalibration involves considering several levers, such as Appendices 1 to 4, the need to avoid environmental bottom lines, the effects management hierarchy, the High/Medium split and how specific new activities are provided for. This section focuses on the overall framework for the management of adverse effects on SNAs and the High/Medium split. Other individual levers are analysed in other sections of the report.

Given the issues with, and strong opposition to, the High/Medium split, we recommend option two – removing the High/Medium split and extending the effects management hierarchy to effects from the specific activities listed, on any SNA. The same locational, functional and operational constraints would apply. This approach was recommended by a range of submitters as a more pragmatic and workable alternative to the High/Medium split. Several councils noted that the effects management hierarchy is already a step change for Aotearoa. With the recommended amendments, if implemented well, we believe the effects management hierarchy will facilitate a balance between protection and use. This approach counters concerns raised about the High/Medium split, is administratively simpler for councils and provides a consenting pathway for the activities listed in subclauses 3.9(2) and (3) as proposed to be amended (see below).

Addressing the implications

Removing the High/Medium split potentially weakens the protection of 'high' SNAs from some adverse effects. Changes to the effects management hierarchy, the environmental bottom lines to be avoided in subclause 3.9(1)(a), and how the specific new activities in clause 3.9 are provided for will help address this.

Councils may wish to identify specific SNAs where the adverse effects to be avoided listed in subclause 3.9(1)(a) apply to all activities due to those SNAs having irreplaceable, incredibly rare or exceptional features (this is also provided for in aspects of the effects management hierarchy). This work would be in accordance with the 'highly vulnerable biodiversity areas' proposed in the NBE Bill. A council may also wish to identify no-go areas where a complete avoid imperative should apply or where biodiversity offsets are not appropriate.

The effects management framework may constrain new subdivision, use and development, meaning it may not be able to take place in a particular location (within or affecting an SNA). This is necessary for the protection of SNAs, which have substantive intrinsic, ecological, socio-cultural and economic value. Therefore, a form of 'minimum standard' is warranted. We recommend other government goals, such as zero carbon and renewable energy goals, are pursued and integrated into other national direction and strategic planning tools to allow joint objectives to be achieved.

We believe non-regulatory support alongside the NPSIB will be essential to assisting landowners and councils in the protection of SNAs. Work is ongoing in this area.

Managing significant adverse effects

Minor corrections and rewording to improve workability and provide greater clarity, with no change to intent, are needed for this clause along with any corresponding changes required to other clauses that reference this clause of the proposed draft NPSIB (clause 3.9).

Concerns were raised by submitters, along with some observations from local government, that unprotected areas of potential biodiversity value in private ownership are coming under development pressure in anticipation of the restrictions of the NPSIB. We consider that clause 3.8 relating to the requirement to identify SNAs gives scope to territorial authorities to assess and include in their plans additional areas that come to their attention as SNAs, and the clause related to managing effects on biodiversity outside of SNAs will give councils scope to protect unprotected significant areas. Amendments are recommended to make it clear that:

- subdivision, use or development affecting an existing SNA or equivalent (that is, assessed as meeting the definition of and the criteria for an SNA) must avoid the identified adverse effects
- the effects management hierarchy applies from commencement date, without a need to wait until objectives, policies and rules in district plans are updated for consistency with this clause
- if a new area of indigenous biodiversity is identified, it must be included in the next plan change/plan (see section 5 of Part B, above)
- adverse effects on indigenous biodiversity outside SNAs should be managed through the effects management hierarchy (see section 5 of Part B, above).

This provides a level of protection to those areas that currently have no or limited protection.

We recommend that it is made clear that local authorities must give effect to this clause by making changes to their policy statements and plans.

The five adverse effects to avoid

The key issue for many submitters was around the interpretation and implementation of the avoids of clause 3.9(1) and that they would essentially provide a blanket prohibition on activities in SNAs. Submitters variously considered that:

- it should relate to only significant or more than minor effects
- the effects management hierarchy should be applied instead
- councils should be allowed to identify a range of activities with minor or temporary effects which are permitted.

Several submitters sought clarification on how to interpret 'the effects to be avoided' – especially what level of effect the avoids should apply to and the scale at which they should apply (that is, site specific or regionally). They commented that if addressed on a site-by-site basis and to minor effects, it could mean something like the removal of a single branch would need a consent. This list is well supported by evidence.[53] Technical advice indicates these adverse effects are standard considerations for consenting officers. The adverse effects to avoid are also consistent with section 5(2)(c) of the RMA and with the maintenance of indigenous biodiversity as set out in subclause 1.7(3). Although these are understood to be the significant effects to be avoided, which apply at an ecological/ecosystem scale, guidance will help with the interpretation.

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[53] Walker S, Lee W, Bellingham P, Kaine G, Richardson S, Greenhalgh S, Simcock R, Brown M. 2018. *Critical factors to maintain biodiversity: What effects must be avoided, remediated or mitigated to halt biodiversity loss?* Manaaki Whenua | Landcare Research Contract Report LC3116 prepared for the Biodiversity Collaborative Group.

Several submitters were concerned the avoid directive could potentially run counter to the 'reasonable use' test in section 85(2) of the RMA. Legal advice indicated there was little potential for this to occur, as it did not relate to a provision in a plan that was unreasonable to a property owner but rather served the statutory purpose of promoting sustainable management of natural and physical resources (a question of public interest). Given the 'adverse effects to avoid' serve the purpose of promoting the sustainable management of natural and physical resources (of which environmental protection is a core element), planning provisions flowing from these should achieve this (if implemented correctly) so would be justified.

We consider it critical that the adverse effects to avoid are retained to protect the most significant biodiversity values. These avoids are 'best practice' and were used in the BCG report, and expert evidence supports them. Guidance can clarify how this would translate into plan rules and matters of discretion for consents. We recommend this approach over making significant changes to the subclause, as the intent is for this subclause to be widely applicable and interpreted with ecological input at the relevant scale of ecosystem and activity.

Submitters expressed concern about an absence of baseline monitoring on whether an SNA is adversely affected. We consider the SNA identification exercise will provide adequate baseline information, which will be added to over time through any AEE process, and the required monitoring.

At Risk species

Several submitters pointed out subclause 3.9(1)(a)(iv) does not include At Risk species. They argued this was inconsistent with the direction set out in the Manaaki Whenua | Landcare Research report,[54] which informed the development of the environmental bottom lines for avoidance and set the threshold for avoidance in the other parts of subclause 3.9(1)(a).

We consider At Risk species were inadvertently omitted from subclause 3.9(1)(a)(iv), as it was intended to apply to both At Risk and Threatened species. We recommended that in the Appendix 1 criteria for identifying SNAs, the At Risk species presence trigger be replaced with the subcategory At Risk (Declining) (see discussion in section 4 of Part B, above). Therefore, consistent with this approach, we recommend including At Risk species in subclause 3.9(1)(a)(iv) but limiting them to those in the At Risk (Declining) category.

Fragmentation and buffering

This clause contains two separate concepts amalgamated for conciseness. However, it would be clearer to separate fragmentation from buffering. The intent is to address separately:

- the fragmentation of the SNA and the loss of buffers or connections in the SNA
- the function of the SNA as a buffer or connection to other important habitats and ecosystems.

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[54] Walker S, Lee W, Bellingham P, Kaine G, Richardson S, Greenhalgh S, Simcock R, Brown M. 2018. *Critical factors to maintain biodiversity: What effects must be avoided, remediated or mitigated to halt biodiversity loss?* Manaaki Whenua | Landcare Research Contract Report LC3116 prepared for the Biodiversity Collaborative Group.

Applying the effects management hierarchy

Some submitters raised issues about the clarity of wording in and the relationships between clauses requiring proposals to avoid adverse effects and the application of the effects management hierarchy. To address this we recommend the inclusion of a subclause clarifying what decision-makers need to make sure that applicants have demonstrated how each step of the effects management hierarchy has been applied.

There will also need to be a corresponding change resulting from the changes proposed to Appendices 3 and 4 (discussed in section 9 of Part B, above). A point will need to be added to address the relative importance of the principles in implementing the effects management hierarchy, to ensure when biodiversity offsetting or compensation is applied, the applicant has complied with Principles 1 to 6 in Appendices 3 and 4 and has had regard to the remaining principles in Appendices 3 and 4, as appropriate.

Exceptions

There was mixed feedback on whether the scope of specific activities or exceptions provided for should be narrowed or broadened. There was a range of conflicting views about the exceptions and their associated restrictions, including:

- the extent of the exceptions – some considered too much scope is provided, others that the provisions are too stringent
- it will be difficult and costly to prove functional and operation need and the consideration of alternative locations
- specific infrastructure should align with the NPS-FM
- this will affect urban growth areas, particularly infrastructure, which is not provided for in the national and regional benefit restrictions
- inequality in exceptions – activities that may have significant adverse effects are provided for, but general maintenance activities by landowners is not
- opposing views on the exceptions for renewable electricity infrastructure including that renewable electricity generation is not sufficiently provided for and requires a separate consent pathway
- opposing views on the mining and extraction exceptions.

Some iwi/Māori submitters did not support operational need as it may result in the destruction of SNAs purely for economic reasons. Activities allowed or provided for as exceptions were identified by the BCG as being important to New Zealanders' social, cultural and economic wellbeing, as well as being spatially constrained. The gateway tests and the effects management hierarchy provide a consent pathway for certain activities, with the requirements increasing with the degree of adverse impacts. The following sections discuss each of the exceptions in turn.

Other management regimes

For clarity it should be stated in the clause on managing adverse effects on SNAs that there are alternative management regimes provided for in the NPSIB that do not include the '5 avoids' or the effects management hierarchy as their key management tools. We recommend activities with their own management regimes in other clauses of the NPSIB be identified, such as SNAs on Māori lands and those in plantation forestry and within geothermal ecosystems.

Allowed activities

Activities with minor impacts

There was a suggestion in the submissions that councils be given discretion to determine the circumstances where exemptions from the effects management framework apply. We believe this leniency would undermine the intent of the effects management framework, would risk appropriate protection for SNAs and would result in inconsistencies between councils. The suggestion reflects a concern of some submitters that subclause 3.9(4) did not include common permitted activities with minor adverse effects (such as minor vegetation clearance for infrastructure maintenance around dwellings, for tracks, accessways and fences, for public health and safety and for the protection of property).

We explored common permitted thresholds in plans and determined the extent of subclause 3.9(4) does not necessarily need to be further amended. Some of the examples provided by submitters are already covered by the clause on established activities. We have been advised that other examples with minor adverse effects (such as walking tracks and fence lines and pest management) should be able to comply with the avoids. Minor amendments will also mitigate submitter concerns about the overall scope. Care needs to be taken with what is explicitly provided for in the subclause to ensure there will only ever be trivial adverse effects on SNAs from development and use.

Cultural harvest and use

Some submitters were concerned that the subclause did not provide for cultural harvest and mahinga kai. We recommend some changes to clarify the intent and extent and to set out the circumstances in which this applies. We consider the sustainable customary use of indigenous biodiversity in accordance with tikanga should be provided for to align with the intent of clause 3.3.

Public health and safety

A few submissions on subclause 3.9(4)(b) considered that 'severe and immediate' was too constraining and should be broadened, with the terms defined. For example, one submitter considered that it should encapsulate future risks that are not imminent or likely to ensure that vegetation clearance to manage fire risks under the Defence Act 1990 can still occur. Other submitters considered that the subclause should also provide for activities necessary for public safety and for the maintenance and operation of nationally significant infrastructure.

The intent of this subclause was to provide for circumstances where we can pre-emptively avoid potentially far-reaching adverse effects on public health or safety by allowing adverse effects on an SNA to take place. It addresses the gap between what is provided for in emergency situations under section 330 of the RMA, what is provided for as an existing activity under sections 10 and 20A of the RMA and clause 3.12 of the proposed NPSIB, and the consenting pathway for new activities in clause 3.9 of the proposed NPSIB.

We recommend a simplification of the wording providing for the use and development needed to address a high risk to public health and safety, so that it provides scope to respond to pre-emptive and reactive works.

We consider some submitter concerns about this subclause will be addressed through other recommended amendments (around upgrade and maintenance) and inclusion of the recommended definition of 'specified infrastructure'. For instance, these would provide a

consenting pathway for defence facilities operated by the New Zealand Defence Force (NZDF) and for public flood control, flood protection and drainage works and maintenance of existing infrastructure.

Kānuka and mānuka

It is recommended that subclause 3.9(4)(c) relating to kānuka and mānuka SNAs be deleted as the clause is not needed due to the new widespread species exception recommendation included in section 4 of Part B, above.

PCL and Te Urewera

There is a need for certain activities to be entirely exempt from the avoids and effects management hierarchy where they are undertaken:

- by or on behalf of the Crown on PCL and accord with a management plan under the Conservation Act 1987
- for the purpose of managing Te Urewera in accordance with a management plan under the Te Urewera Act 2014.

Biodiversity covenants

Federated Farmers requested in its submission that areas subject to permanent legal protection (that is, QEII National Trust covenants) be exempt from the SNA management regime of the NPS (as provided for plantation forestry areas). It considered this would recognise that the protection of biodiversity is already provided for under other legislation. We investigated the feasibility of providing for the management of SNAs with QEII National Trust open space covenants, Conservation Act 1987 and Reserves Act 1977 covenants, and Ngā Whenua Rāhui kawenata through their covenant agreements and management plans (where available), rather than through the management regimes of the NPSIB with the QEII National Trust, DOC and Ngā Whenua Rāhui officials.

QEII National Trust covenants are open space covenants that, following agreements with the original landowners, require protection and management regimes in perpetuity with the QEII National Trust as the perpetual trustee. Most, but not all, have biodiversity protection objectives and purposes. They are bespoke, are individually negotiated and have the scope to be both more and less flexible and protective than the NPSIB. Conservation covenants and kawenata are for conservation management for specific purposes and kawenata may be for specific terms or reviewable.

These covenants do not manage subdivision, use or development nor are they designed to provide directly for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as required by section 6(c) of the RMA. Covenants were not designed or intended to be an RMA mechanism, including for consenting or enforcement. As such the covenants were not intended to do the job that the NPSIB is designed to do in identifying and protecting significant biodiversity and ensuring no further losses, and they were site specific so do not consider wider ecosystem or landscape-scale matters.

However, most covenants provide greater restrictions on uses and tailored guidance and management, so in many instances afford greater protection and better management of significant biodiversity values than could be provided for by an SNA. They are also protections undertaken with the support of the original landowners.

As such, providing an exception for SNAs, which are also covered by appropriate indigenous biodiversity covenants, to be managed under the terms of those covenants and any associated management plans has merit and may afford better long-term outcomes for the management of some covenanted SNAs.

Alternatives

We have considered two alternatives to provide for exceptions for appropriate biodiversity covenants that could be added to the subclause.

The first option would be to provide a blanket exception in the NPSIB for activities associated with the management of SNAs where there are appropriate QEII, kawenata, Conservation Act 1987 and Reserves Act 1977 covenants. This would exclude specified activities (essentially making them permitted activities) provided for by the covenants. It would provide a consistent approach to exceptions for specified covenants nationwide. However, it is not recommended, for the following reasons.

- Covenants nationwide would need to be assessed for their appropriateness, and all covenanting agencies and local authorities would need to be consulted, which could be costly and time consuming.
- It would complicate and weaken enforcement, shifting key parts of RMA compliance to covenantees who are not mandated by the RMA to ensure compliance or to undertake enforcement, potentially changing the relationships between covenantors and covenantees.
- The covenants were not designed for this purpose, so not all covenants will provide adequate protection for SNA values.
- It is not an approach supported by the covenanting agencies.

The second (and our recommended) option is to include an 'opt in' exemption for specified biodiversity-based covenants. This would provide scope within the NPSIB for local authorities to individually assess specific covenanted SNAs in their districts/regions. If a covenant agreement or management plan is found to be appropriate, district plans can provide for specified activities to be managed as per their covenant agreements or covenant management plans as an alternative management regime (that is, an exception to applying the avoids and effects management hierarchy). This would need to be at the request of the covenant landowners/lessees and would have to be agreed between all parties to the covenants along with the local authorities.

In many/most cases this process would not be needed, as most management activities permitted by covenants would be consistent with SNA rules. Nevertheless, a management exemption could be considered at the request of a landholder as part of a plan review/change process to add SNAs to a district plan. As a covenant is a private agreement, any exemption would require the approval of the covenantee (which is a perpetual trustee of the covenant values).

This option would allow councils to consider the covenant agreements and management plans in their districts on a case-by-case basis, enabling them to evaluate the extent to which the covenants protect appropriately the values of the SNA identified. Councils could include rules/activity statuses within their plans to provide for agreed management and specific activities on covenanted land. They would be managed as per the covenant or covenant management plan within the RMA plan structure.

This option would enable existing relationships and enforcement roles to be maintained. To ensure this works a covenanting agency would also need to have 'absolute discretion' or a right of veto alongside the local authority, as some covenants provide for activities that would be inappropriate in SNAs.

The inclusion of an opt-in exemption would likely result in increased requests for covenants and a significant number of current covenant owners wishing to opt in. This would have resourcing implications for the covenanting agencies.

Māori lands exceptions

It is recommended that these be more appropriately provided for in a specific clause relating to managing SNAs on Māori lands, as discussed in section 16 of Part B, below.

Specified infrastructure

The proposed NPSIB included an exemption for nationally significant infrastructure from the '5 avoids' with effects instead managed through the effects management hierarchy.

Submitters had varying views on whether the NPSIB should retain a list definition of 'nationally significant infrastructure'. Those who supported a list definition considered it would provide regulatory certainty for consent applicants. Those who opposed it argued that it would lock-in certain infrastructure as significant and would not be future-proof. Regardless of the format, many submitters considered the 'nationally significant infrastructure' definition left out various types of what they considered to be 'significant infrastructure', including that identified within RPSs and regional plans.

The intent of clause 3.9 was to acknowledge that some infrastructure essential to the nation is often restricted to specific areas. It recognised that infrastructure contributes to broader government goals and is needed to meet local needs. It also needs to be provided for according to other legislation and national direction under the RMA.

We have reviewed both the format and the breadth of the definition and have looked at how the same definition evolved in the National Policy Statement on Urban Development 2020 (NPS-UD)[55] and the NPS-FM, following consultation on those instruments. It should be noted the NPS-UD is an enabling regulation whereas the NPS-FM is a protecting regulation, so the applications are quite different.

The NPS-UD retained a list definition for 'nationally significant infrastructure', with some clarifying amendments. Conversely, the NPS-FM removed the list definition and replaced it with a definition of 'specified infrastructure' and a set of parameters dictating the circumstances in which specified infrastructure was provided for.

The NPS-UD sets a precedent in progressing with a list definition of 'nationally significant infrastructure', given it has already defined this term. However, the list definition omits what submitters on the proposed NPSIB considered 'significant infrastructure' for which a consenting pathway should be provided. This includes things like regionally significant infrastructure, bulk water and wastewater, defence facilities, telecommunications networks and flood and drainage infrastructure. Therefore, if we were to progress with a list definition,

[55] National Policy Statement on Urban Development 2020.

we would recommend deviating from the NPS-UD definition to one that is appropriate to the NPSIB context.

We consider the NPS-FM approach more appropriate for the NPSIB context, as it is adaptive and future-proof, and it navigates the complexity of deciding what is nationally significant and how to include regionally significant infrastructure appropriately. It allows alignment with other legislation (such as the Civil Defence Emergency Management Act 2002), while setting parameters to ensure the protection of SNAs. Therefore, we recommend aligning the definition as appropriate with the NPS-FM and replacing the term 'nationally significant infrastructure' with a new definition for specified infrastructure.

We see merit in adopting a definition that:

- aligns with higher-order legislation (the Civil Defence Emergency Management Act 2002, Soil Conservation and Rivers Control Act 1941 and Land Drainage Act 1908)
- recognises the importance of and the locational constraints facing some regionally significant infrastructure
- requires the included infrastructure to be subject to public consultation by requiring it to be identified in an RPS or regional plan.

This definition will largely address submitter concerns about what was omitted from the proposed definition.

We have not included water-storage infrastructure as specific infrastructure, although it is proposed to be provided for in the amended NPS-FM. We did not consider this change appropriate in the context of the NPSIB for several reasons. First, the overriding purpose of the NPS-FM's Te Mana o te Wai provides a higher level of protection. Second, the most probable areas where water storage interacts with biodiversity are natural wetlands. If conflict in the document requirements occurs in this instance, the NPS-FM would take precedence. Finally, the terrestrial nature of the NPSIB SNAs would make water storage proposals generally inappropriate in an SNA unless there was a national or regional benefit (that is, it was a lifeline utility or was nationally or regionally significant).

Note also that renewable electricity generation assets and activities, and electricity transmission network assets and activities, are not 'specified infrastructure' for the purposes of the NPSIB. Their interactions with SNAs and biodiversity are to be managed through the amendments proposed in the consultation on renewable electricity generation and transmission.[56] This is discussed further below under 'Renewable electricity generation and electricity transmission assets'.

We recommend the definition includes provision for defence facilities operated by the NZDF to meet its obligations under the Defence Act 1990. This would provide a consenting pathway for defence facilities in line with the NZDF's legislative requirements.

Many submitters on the exposure draft of the NPSIB, especially those from local government, raised concerns the NPSIB would prevent urban development and housing growth. In particular, the specific infrastructure clause may restrict the infrastructure provision needed to support urban growth areas identified in the NPS-UD. We do not consider it appropriate to

[56] Ministry of Business, Innovation and Employment, Ministry for the Environment. 2023. *Strengthening national direction on renewable electricity generation and electricity transmission*. Wellington: Ministry of Business, Innovation and Employment.

provide a blanket exception for new urban development, as it is an activity that may give rise to significant adverse effects and losses of SNAs. The NPS-UD does recognise that natural and open spaces are part of quality urban environments. SNAs are a matter of national importance that must be recognised and provided for by decision-makers; this is recognised in the NPS-UD under 'Qualifying matters'.

However, there is a nationally recognised housing shortage. Given the regional and national importance of these growth areas it is likely their infrastructure would qualify as significant infrastructure. We recommend a clarification of the definition of specified infrastructure to make it clear that infrastructure needed to support identified growth areas is considered specified infrastructure.

It is also critical that, alongside this amendment, we amend the parameters dictating when it is appropriate for specified infrastructure to be provided for to protect SNAs. We recommend retaining the proposed parameters of functional or operational constraints and no practicable alternative locations gateway tests as set out in subclauses 3.9(2)(b) and (c). However, we also recommend the inclusion of an additional parameter requiring specified infrastructure to provide significant national or regional public benefit. This sets an expectation that the necessity and purpose of the infrastructure is sufficient to warrant consideration of adverse effects on an SNA. We recommend using guidance to help define significant national or regional public benefit.

These parameters, along with the revised effects management hierarchy and robust AEE requirements, should provide a consenting pathway for infrastructure that protects SNAs while support the infrastructure needed to provide for social and economic wellbeing.

We also do not consider it necessary to provide explicitly for designations/notices of requirements.

Mineral and aggregate extraction

Provision of an exemption for mineral and aggregate extraction was supported primarily by the mineral and aggregate industry and contested by a range of other submitters. The intent of this provision is to provide a consenting pathway for what are locationally constrained activities that contribute to the social, economic or cultural wellbeing of Aotearoa.

Submitters who disagreed with this provision considered it an inappropriate blanket approach not reflecting Part 2 of the RMA, and that it did not have the same public benefit as the provision for nationally significant infrastructure. They noted it opened the argument on why other activities contributing to the wellbeing of Aotearoa were not similarly provided for.

Some submitters recommended a return to the BCG's drafting, which limited the provision to mineral and aggregate extraction for domestic supply. We moved away from this following advice from the Ministry of Foreign Affairs and Trade that it would conflict with the General Agreement on Tariffs and Trade and advice from the industry that a mine would often contribute to both domestic and export supply. However, we do consider the benefit of this should be at national and regional scales.

Submitters requested alignment with other government direction. As such it is recommended that the wording of these provisions are made consistent with that of the National Policy

Statement for Highly Productive Land (NPS-HPL).[57] We recommend amending the wording of the exceptions for mineral extraction and aggregate extraction by replacing 'domestically' with 'using resources within New Zealand'. The phrase 'could not otherwise be achieved using resources within Aotearoa New Zealand' is included to ensure the necessity of the activity and to avoid unintentionally promoting the import of minerals over domestic extraction.

For aggregate extraction, we recommend including an additional parameter requiring it to provide significant national or regional public benefit that could not otherwise be achieved within Aotearoa. Again, this sets an expectation of the necessity and purpose of aggregate extraction to warrant the consideration of adverse effects on an SNA. Aggregate is an essential input for a range of economic sectors, including housing. It often needs to be sourced close to the locations of use. Further, aggregate needs are often driven by regional context – for example, housing development in high-growth areas.

Some submitters considered that mineral extraction should be considered at both a national and regional level where there was public benefit the same as aggregates. As stated above, aggregates require consent pathways at both national and regional levels to provide local resources for the construction of housing and regionally and nationally important infrastructure (that is, state highways). Mined minerals are generally of national significance, in that they are used at levels that benefit the country nationally. 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 and batteries. Where the national benefit test is met, mineral extraction can occur in accordance with the effects management hierarchy. For mineral extraction, we recommend an additional parameter requiring it to provide significant national public benefit that could not otherwise be achieved within Aotearoa. This sets an expectation regarding the necessity and purpose of mineral extraction that warrants a consideration of adverse effects on an SNA. We intend national public benefit to comprise mineral extraction that is in line with government goals. Avoiding prescriptiveness in the NPSIB will enable it to be future proof.

We consider that providing a consenting pathway for some mineral and aggregate extraction through these provisions is a pragmatic approach that still supports SNA protection, while addressing government goals and regional need for resources.

Additional controls on the coal mining consent pathway – existing mines only

Following feedback through the exposure draft consultation, and to align with government policy, further consideration was given to the consent pathway provided for coal mining. Providing a permanent consenting pathway for coal extraction where it causes adverse effects on SNAs is not consistent with Aotearoa New Zealand's climate goals.

In light of the Government's climate change priorities and the proposed sunset clause for coal mining in the NES-F, putting a limit on the exception for coal mining activities in SNAs is appropriate. We consider the consent pathway for coal extraction should be limited to the operation or expansion of existing mines. We recommend that the drafting is consistent with recent changes to the NPS-FM and NES-F, specifying that:

- the exception (consent pathway) only applies to the operation or expansion of existing mines lawfully established before the commencement of the NPSIB

[57] National Policy Statement for Highly Productive Land 2022.

- for thermal coal, the operation or expansion of existing mines should be subject to a sunset clause of 31 December 2030
- for coking coal, the operation or expansion of existing mines may continue beyond 31 December 2030
- limits on the mining consent pathway for coal to the operation or expansion of existing mines will apply to any type of coal (thermal or coking) from the commencement date
- the gateway tests still apply.

This will provide for thermal coal resources required in the short-to-medium term, which aligns with the 2037 date for the phasing out of low- and medium-temperature coal-fired boilers. Coking coal is exempt on the basis that it is used for steel and cement production and is not used in electricity or process heat generation. This could be revisited in the future, should viable alternatives for steel and cement production become available.

In practice, after 31 December 2030, a consent authority will need to be satisfied that any new consent application to extend an existing coal mine affecting an SNA is for coking coal, not for thermal coal. Consent authorities will already need to consider the type of coal being mined as part of assessing whether the application has 'significant national public benefit'. If a consent application for mining of thermal coal is lodged after 31 December 2030, then consent authorities should apply clause 3.10(2).

All consent applications for new coal mines in or affecting SNAs under the NPSIB (including for thermal or coking coal) would be subject to the 5 avoids (clause 3.10(2)) and the gateway tests – the outcome of which, if met, should be to prevent net loss of their extent or value. If an application for a new coal mine or to mine thermal coal can satisfy the requirements of clause 3.10(2), then it may still be considered through the consenting pathway laid out in the effects management hierarchy. The purpose of this clause is to effectively manage adverse effects on SNAs.

This is an interim measure to align both the NPSIB and the NES-F with current national direction on the management of coal and its uses. Transition to the NPF under the proposed Natural and Built Environments Act will provide opportunities to revisit these settings and how they align with other efforts to manage coal in Aotearoa (such as the New Zealand Emissions Trading Scheme).

Gateway tests – functional and operational need and no practicable alternative locations

We consider that other issues raised by submitters – such as the scale of the AEEs required alongside consents, clarity on how 'no practicable alternative' is determined, and how 'use', 'need' and 'mineral and aggregate extraction' are interpreted – are best dealt with through guidance. We do agree the definitions of 'functional need' and 'operational need' are better placed in the interpretation clause.

We note there was some opposition raised to the gateway tests on the basis that they cause an additional burden of proof in some instances. However, we consider that the existing proposed parameters (of functional and operational constraints and no practicable alternative locations) should be retained, as these were generally supported by submitters, and they are important for justifying why adverse effects should not simply be avoided. We therefore recommend retaining these gateway tests.

The intricacies of the application of the gateway tests to infrastructure would be best dealt with in guidance, which could be developed in consultation with other agencies. It will also be

possible to review the effects and impacts of the gateway tests, and the effects management hierarchy, when this document is transitioned to the NPF.

Renewable electricity generation and electricity transmission assets

The consent pathway provided for renewable energy generation and electricity transmission in the proposed NPSIB aligned with that provided for other regionally and nationally significant infrastructure (as defined).

Submitters and stakeholders raised concerns that the provisions would not sufficiently enable the deployment of renewables at the scale and pace required to meet emissions targets and decarbonise Aotearoa's economy.

A discussion document on strengthening national direction on renewable electricity generation (REG) and electricity transmission (ETN) was released for public consultation between April and June 2023.[58] It put forward a range of options for providing for greater and faster uptake and development of REG, including options for consent pathways for REG and ETN development affecting SNAs and other matters of national importance. The preferred approach includes a consent pathway and effects management hierarchy for significant environmental values that differs from the one in the NPSIB and the NPS-FM. The gazetting of the NPSIB with an alternative consent pathway during the consultation period would create confusion with the consultation process on REG and ETN consent pathways.

A range of options were considered for addressing the potential conflict between the documents and the perceived impediment that the NPSIB could pose for new REG/ETN development that impacts SNAs, including a bespoke pathway in the NPSIB. It was considered simpler to provide a specific pathway for all REG/ETN development within the final amendments arising from the discussion document. This would also entail removing REG/ETN from the specified infrastructure definition in the NPSIB and clarifying that none of the NPSIB provisions applies to REG/ETN development.

This will leave all REG/ETN applications for new developments, upgrades, maintenance and operation to be dealt with directly by the RMA, and associated RMA plans and policy statements, until such time as the amendments to the NPS-REG and associated documents are finalised and come into effect. An issue with this approach is that several options are being consulted on, and the final outcome of this process is not yet known, which creates a level of uncertainty for industry in the interim.

This approach could ultimately provide a simpler, more consistent consent pathway for REG/ETN developments adversely affecting any of the significant environmental values identified as matters of national importance in section 6 of the RMA. It would also provide greater certainty to REG/ETN development in the longer term.

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[58] Ministry of Business, Innovation and Employment, Ministry for the Environment. 2023. *Strengthening national direction on renewable electricity generation and electricity transmission*. Wellington: Ministry of Business, Innovation and Employment. Consultation was undertaken on a range of options to strengthen:

- the National Policy Statement for Renewable Electricity Generation 2011
- the National Policy Statement on Electricity Transmission 2008
- the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009.

The amendments are intended to provide clear, consistent pathways for REG and ETN infrastructure, necessary to support the increase in demand for 'clean' renewable energy.

Reasonable use/single dwelling

There will be instances (although it is difficult to estimate how many) where private properties will be entirely covered by SNAs. In these cases, we consider a consenting pathway should exist to allow landowners to use allotments already created but not developed. A consent pathway could be provided through the effects management hierarchy, if there were no other locations within the allotment where a dwelling or infrastructure could be constructed in ways that avoided the adverse effects specified in the NPSIB. This reflects the approach of many current resource management plans, which provide consenting pathways for single dwellings on established allotments.

The changes we have recommended will mean that any new use or development associated with a single dwelling on an allotment created before the commencement date of the NPSIB will utilise the effects management hierarchy for managing adverse effects on any SNA.

Maintenance and restoration of indigenous biodiversity

We recommend retaining this subclause. It was well supported by submitters and promotes the protection, restoration and enhancement of SNAs. We consider there are and will continue to be trade-offs in this area. Each case will be unique and will need to be weighed according to its merits. It would be useful to clarify this subclause is intended to provide for indigenous biodiversity gains and that it should not result in the permanent destruction of significant indigenous biodiversity. We recommend that any works are undertaken in accordance with the effects management hierarchy, a restoration management plan or agreed approach to ensure that impacts are necessary and mitigated as appropriate.

Use of indigenous biodiversity

Several submitters were concerned subclause 3.9(4)(d) of the proposed NPSIB, as drafted, created a loophole for use and development if someone could claim that an SNA covered indigenous vegetation or habitat had been established for a purpose other than the maintenance, restoration or enhancement of indigenous biodiversity. To address this, we recommend amendments to strengthen the scope and clarify the intent of this subclause.

The intent of subclause 3.9(4)(d) was to avoid discouraging people from planting indigenous vegetation for a variety of purposes that could have co-benefits for indigenous biodiversity. These purposes could include amenity, stormwater treatment, windbreaks, flood control and riparian strips (excluding biodiversity enhancement planting) and fibre and honey production. The subclause would then provide for the use or development as intended to meet that purpose – for example, the operational maintenance of green infrastructure for stormwater treatment.

It was never the intention for this subclause to apply to plantation forestry. Any plantation forest that is, or contains, an SNA must be managed through the plantation forestry clause, including indigenous forest plantations.

We recommend that subclause 3.9(4)(d) be amended to ensure that no more indigenous vegetation or habitat is cleared than is necessary to achieve that purpose. We also recommend drafting that narrows the subclause to exclude plantation forestry and activities managed under the Forests Act 1949.

Interactions with the Forests Act on indigenous forestry and plantation forestry

The Forests Act 1949 applies to indigenous forests on private land in Aotearoa and manages the harvesting, milling and exporting of native timber from existing or regenerating native forest. It is important that the interactions between the Forests Act and the proposed NPSIB are understood and work seamlessly.

The harvesting and milling of indigenous forests require a sustainable forest management plan or permit or a milling statement to be obtained under the Forests Act. Conditions can be placed on the permits or plans to manage factors such as biodiversity, ecology and conservation. However, we understand that the plan or permit process applies only to natural indigenous forests and not planted indigenous forests.

The original intent of the plantation forestry clause was it would apply to exotic forests. However, this left a loophole for any planted indigenous forests. Given the Forests Act sets out provisions for the regulation of natural indigenous forests and not planted indigenous forests, we considered it appropriate that the considerations and management of adverse effects in plantation forests under the forestry clause of the NPSIB would also apply to planted indigenous forests. Therefore, the plantation forestry clause has been broadened to confirm it applies to all plantation forests.

However, there is still a potential interaction with the Forests Act, as it enables the harvesting of indigenous timber, but the NPSIB does not recognise this activity.

We recommend that the harvesting of indigenous timber be exempt from the effects management hierarchy. This approach recognises the Forests Act places limits on the rate of harvest of indigenous timber in most cases, and, therefore, that harvesting is sustainable.

The Forests Act does not place limits on other effects associated with harvesting, so we consider these other effects should be managed through the effects management hierarchy. Practically, this may result in situations where harvests can occur but supporting activities are limited or prevented.

Recommendations and decisions

Recommendations for managing adverse effects on SNAs

12a) Make minor corrections and reword to improve the workability and provide greater clarity, with no change to intent.

12b) Require local authorities to give effect to these clauses by making changes to their policy statements or plans.

Changes to managing adverse effects on SNAs:

12c) Remove the High/Medium distinction between types of SNAs, extend the effects management hierarchy to apply to the effects of the specific activities listed on any SNA and make any associated wording changes needed as a result.

12d) Subdivision, use or development affecting existing SNAs (or equivalent) must avoid the identified adverse effects.

12e) Amend so the effects management hierarchy applies from commencement date.

12f) Include At Risk (Declining) species in subclause 3.9(1)(a)(iv).

12g) Delete subclause 3.9(1)(a)(iii) and replace it with the following subclauses:

- Subclause (c): fragmentation of the SNAs and the loss of buffers or connections within the SNA.
- Subclause (d): the function of the SNA as a buffer, or connection, to other important habitats and ecosystems.
- Include a subclause clarifying:
- that decision-makers need to make sure applicants demonstrate how each step of the effects management hierarchy has been applied; and
- when biodiversity offsetting or compensation is applied, which principles in Appendices 3 and 4 must be complied with, and which must be had regard to.

Changes to the exceptions:

12h) Identify which developments and uses have specific management regimes in other clauses of the NPSIB.

12i) Provide for sustainable customary use of indigenous biodiversity in accordance with tikanga.

12j) Delete the exemption for kānuka and mānuka SNAs.

12k) Amend clause 3.9(4)(b) to provide for use and development needed to address a high risk to public health and safety.

12l) Exempt from the avoids and effects management hierarchy works undertaken:

- by or on behalf of the Crown on public conservation land
- for the purpose of managing Te Urewera in accordance with a management plan.

12m) Include an 'opt in' exemption option for local authorities for specified biodiversity-based covenants, undertaken at the request of the covenantors and with the written permission of the covenantees, and include a definition of 'specified covenant'.

12n) Provide for Māori lands exceptions in a specific clause relating to managing SNAs on Māori lands.

12o) Replace the definition of 'nationally significant' with 'specified infrastructure' to align with the NPS-FM where appropriate. Include:

- defence facilities operated by the NZDF for public flood control, flood protection or drainage works
- lifeline utilities (as defined in the Civil Defence Emergency Management Act 2002)
- regionally significant infrastructure
- infrastructure needed to support urban housing growth in identified areas.

12p) Make clear that the consent pathway for specified infrastructure includes upgrades.

12q) Amend subclause 3.9(2)(d) to provide a consent pathway for specified infrastructure that provides significant national or regional public benefits.

12r) Add a subclause requiring mineral extraction to provide significant national public benefit that could not otherwise be achieved using resources within Aotearoa.

12s) Include a limit on the exemption for coal mineral extraction that restricts the consent pathways within SNAs to the operation and expansion of existing coal mines only, and limit the consent pathway for existing thermal coal mines to 31 December 2030.

12t) Add a subclause requiring aggregate extraction to provide significant national or regional public benefits that could not otherwise be achieved using resources within Aotearoa.

12u) Move the definitions of 'functional need' and 'operational need' to the interpretation clause.

12w) Add to the application section a provision noting that nothing in this National Policy Statement applies to renewable electricity and, for the avoidance of doubt, renewable electricity generation, electricity transmission network assets or renewable electricity generation assets are not 'specified infrastructure' for the purposes of this National Policy Statement, on the basis that:

- the Government is consulting on amendments to the National Policy Statement for Renewable Electricity Generation and the National Policy Statement on Electricity Generation
- it is preferable to provide certainty in the regulatory environment for renewable electricity generation and electricity transmission until the consultation process concludes and amended regulations are confirmed by Cabinet.

12x) Provide for a new use or development associated with a single dwelling on an undeveloped allotment created before the commencement date of the NPSIB using the effects management hierarchy for managing adverse effects on any SNA.

12y) Amend the subclause on the maintenance and restoration of indigenous biodiversity, for clarity, and to ensure that work is undertaken in accordance with either the effects management hierarchy or a restoration management approach, and that it does not result in the permanent destruction of significant habitat of indigenous biodiversity.

12z) In the case of habitat established for reasons other than biodiversity restoration, ensure that no more indigenous vegetation or habitat is cleared than is necessary to achieve the primary purpose.

12aa) Insert a subclause to exempt harvesting from the effects management hierarchy if it has a permit under the Forests Act 1949, but ensure that the effects of any other associated activities are managed through the effects management hierarchy.

Changes to the plantation forestry clause:

12bb) Broaden the plantation forestry subclause to confirm it applies to all plantation forests (including indigenous).

Minister's decision

Agree

13 Managing adverse effects in plantation forests

Proposal consulted on

Plantation forests give a stable forest environment for long periods of time, allowing them to provide suitable places and habitats for indigenous flora and fauna to use and become established (including Threatened and At Risk species). However, the requirement to avoid the adverse effects listed in clause 3.9 of the proposed NPSIB could effectively prevent forest harvesting if the wildlife in the forests were significant. This is possible in many parts of the country. As such, a specific approach was developed to manage forestry activities in a different way from other subdivision, use and development under the proposed NPSIB, while still maintaining biodiversity.

Clause 3.10 of the proposed NPSIB set out specific requirements for managing adverse effects in plantation forests. It required populations of Threatened and At Risk species in plantation forests to be maintained during the course of consecutive rotations.

The intent of this provision was, and remains, to align the proposed NPSIB with the National Environmental Standards for Plantation Forestry (NES-PF)[59] and to provide a broad effects management regime for plantation forests containing SNAs. This took a balanced approach to protecting indigenous biodiversity and providing for forestry operations to continue where SNAs were present. The adverse effects of plantation forestry activities on Threatened and At Risk species of fauna or flora need to be carefully managed, and a degree of flexibility is needed, to ensure the operation of plantation forests is not prevented.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were as follows.

- The scope of (the original) clause 3.10 only relates to Threatened and At Risk flora and fauna, has a different approach for each, and has no consideration of wider SNA values, raising concerns about the approach.
- The drafting and language of clause 3.10 is unclear, particularly around the required outcomes or actions. This could be unclear during implementation, and the approach for forestry is also generally unclear and, therefore, potentially ineffective.
- The approach taken in clause 3.10 is either too restrictive and burdensome for forestry activities or too permissive, as forestry should not be treated any differently from other subdivision, use and development where there are identified SNAs.
- The interactions with the NES-PF are unclear, and further guidance and clarity is needed.

Analysis

We still consider a different management approach is needed for SNAs in plantation forests, recognising the importance of biodiversity alongside the contribution of forestry to economic, social and cultural wellbeing, as well as the practicalities of forestry practices (such as harvesting). To ensure the effects management approach is workable for forestry, yet

[59] Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.

sufficiently rigorous to protect and maintain indigenous biodiversity, we recommend some amendments.

Appropriateness of provisions

Some forestry industry submitters raised concerns the approach proposed by clause 3.10 was too onerous, created uncertainty and could result in expensive and repetitive consents, affecting the viability of the industry. Other submitters felt the proposed NPSIB approach complicated the biodiversity issue, as the NES-PF already included some provision for biodiversity.

A further group did not agree a different management approach for forestry was required and considered that policies for SNAs should apply uniformly to all land uses and development. There were also submitters who largely agreed with the proposed approach.

Given the range of submissions on the general approach taken in clause 3.10, we carried out further analysis and discussions. Forestry is one of a limited number of activities recognised as needing a unique management approach in the NPSIB. We considered that an equivalent of clause 3.10 would have the benefit of providing a specific pathway for forestry activities where SNAs were present, to ensure the operation of plantation forests was not unduly constrained while protecting Threatened and At Risk species. However, there was room for improvement in the clarity of language, direction on effects management and SNAs not containing Threatened or At Risk (Declining) species.

Relationship with NES-PF

The NES-PF directs the management of some of the adverse effects of forestry on biodiversity (for example, provisions for bird nesting, indigenous vegetation clearance, setbacks and SNAs). Some submitters felt the NES-PF was sufficient for addressing forestry effects on biodiversity so the NPSIB should exclude forestry. Conversely, other submitters felt the NES-PF was inadequate, unspecific and ineffective in managing and protecting biodiversity.

Excluding forestry from the NPSIB would mean that the impacts on biodiversity of forestry would only be managed through the NES-PF and any voluntary measures taken by the forestry industry. The NES-PF only contains provisions for limited fauna species and indigenous vegetation clearance outside SNAs. It does not take an ecosystem approach or provide for reptiles or invertebrates. We consider this is not sufficiently protective to maintain biodiversity, especially in SNAs. Being rules based and not including policies and objectives, the NES-PF alone cannot implement broader biodiversity policy directions.

The proposed NPSIB is the higher order policy setting the direction for indigenous biodiversity management, so it is important to ensure the two pieces of national direction work well together. Changes to the NES-PF have recently been consulted on, so there is an opportunity to strengthen the NES-PF provision for indigenous biodiversity and to ensure the NES-PF and NPSIB are well aligned.

The NES-PF allows plan rules to be more stringent for SNAs. Any plan rules made under the NPSIB that are more protective than the NES-PF rules would apply. We consider the proposed NPSIB to be a critical piece of national direction for establishing a clear, robust bottom line that will help to protect indigenous biodiversity. This can then be reflected in the NES-PF.

Once the NPSIB is gazetted, there will be an opportunity for further work on the NES-PF to ensure the instruments work well together and for guidance to explain how both instruments work together.

Remove forestry-specific direction

We considered the option of not providing forestry-specific policy direction, relying instead on the stricter SNA requirements in clause 3.10, but this could effectively prevent forest harvesting in many places due to its inability to avoid the five adverse ecological effects. Although this would achieve the objective of maintaining indigenous biodiversity, it would likely hinder the ability of people and communities to provide for their social and economic wellbeing where these are linked to the ongoing operation of the forestry industry.

We recommend that a specific forestry provision be retained but amended to improve the overall language and layout and allow for consecutive rotations of harvest to continue.

Practical guidance on how to remedy and mitigate adverse effects will be important in the effective implementation of the NPSIB. We recommend that guidance material be prepared with the industry to support a smooth and consistent implementation and provide practical information for the forestry industry, councils, landowners and stakeholders.

Different management approach for flora and fauna

The proposed NPSIB sets a different approach for the management of indigenous flora and fauna in plantation forests than elsewhere. This was originally developed in consideration of the mobility of the many bird and bat species using forests. Originally the approach differed for flora and fauna because it was thought that using the threatened status for both would create too much uncertainty. However, we agree with submitters there are no obvious reasons for only maintaining populations of fauna and not flora in the long term and for not linking the habitat of both to the forest harvesting rotation. The previous subclause 3.10(2) also lacked a reference to adverse effects. Therefore, we recommend a consistent management approach be applied to both flora and fauna. This is appropriate given their equal status as matters of national importance under the RMA and for the efficient application of the policy.

In addition, for consistency with recommendations on the identification of SNAs, we recommend any reference to At Risk species be changed to At Risk (Declining).

Regulatory burden

A bespoke approach has been developed for forestry activities in the proposed NPSIB. We recognise there will be costs to some parts of the forestry industry (for example, those not already operating under an international sustainability stewardship programme), but we have endeavoured to minimise costs while still ensuring the purpose and objectives of the proposed NPSIB are met.

For some activities (such as large-scale clear felling) there may be a need to alter the way in which plantation forests are harvested. This would include using different on-ground processes or management techniques to ensure indigenous biodiversity is maintained and protected as far as practicable according to the requirements of the previous clause 3.10.

The intent of the provisions is to manage the effects of plantation forestry, as opposed to preventing harvesting. This is reflected in the line enabling plantation forestry activities to

continue. It is not intended foresters would be unable to harvest entire plantations. However, there may be limited areas where Threatened or At Risk species or their habitats are present, so harvesting may not be able to occur or will need to occur using different harvest techniques. The intention is harvesting will continue in plantation forests if all practicable measures are taken to mitigate adverse effects.

We anticipate some of the potential costs to the industry will be mitigated by the continuing application and building of the various voluntary processes already done by the industry. It will be important multiple pathways are provided through guidance and potential changes to the NES-PF to meet the voluntary and regulatory requirements.

Improved pasture – could the same approach be applied to plantation forestry?

Submitters raised concerns the requirements for forestry were more onerous than those for pastoral farming (for example the 'improved pasture' provisions). We do not consider this will be the case given our recommended changes.

The adverse effects of farming on biodiversity are different from the potential adverse effects of plantation forestry but, as a general rule, SNAs must be managed more carefully for both land-use types. The improved pasture and plantation forestry clauses are both designed to allow a continuation of industry-specific activities while maintaining biodiversity. They are tailored but are not hierarchies where one is stricter than the other. We do not recommend applying a 'pastoral farming approach' to forestry, as it would undermine the objective of the NPSIB to maintain indigenous biodiversity.

Proposed forestry provision

The approach, as recommended, requires for SNAs:

- populations of Threatened or At Risk (Declining) species in productive areas of a plantation forest to be maintained over time.
- a general direction to maintain indigenous biodiversity to the extent practicable.

This clause is intended to apply only to already-established plantation forests, not to the process of establishing a forest itself (afforestation). Establishing a forest may result in an improvement in biodiversity values (the conversion of a highly modified pastoral landscape to forestry with new areas set aside) or a loss (an area of regenerating bush or scrub cleared and established as a plantation forest). Consequently, we consider it appropriate for afforestation to be treated through the general effects management hierarchy.

The practical reality of harvesting means it may be impossible to avoid or minimise adverse effects in all circumstances ('minimise' means to reduce to the lowest extent possible, so is difficult to implement in clear felling situations). Therefore, we propose that indigenous biodiversity in plantation forests be maintained in the best practicable way. We consider this provides adequate protection, noting it requires considering alternatives before having effects on SNAs. We also note that, in general, effects on SNAs that are not in plantation forests should be limited to edge effects.

Concern was raised over the meaning of the term 'manage'. The intention was to indicate the variety of RMA consenting pathways and formal non-regulatory methods and provide flexibility. However, we think that a 'practicable maintain' approach better reflects the intent

for biodiversity to be managed appropriately in the best way possible, while allowing for forestry activities to continue. The requirement to take the most practicable option to mitigate adverse effects, while maintaining populations of Threatened or At Risk species, sets a clearer threshold for what options for effects management apply. It is more appropriate than 'manage' for this policy. We suggest that guidance also be developed with examples and advice on how effects can be remedied or mitigated in the forestry context.

Including the general direction to manage other effects to the extent practicable also responds to questions on why clause 3.10 was originally limited to Threatened and At Risk fauna and flora. This decision was informed by views that:

- the crossover between SNAs and plantation forests was likely to be uncommon where no Threatened or At Risk species occur
- using all SNA criteria in a plantation forest would create too much uncertainty for the forestry industry.

However, recognising there may be other reasons for an area to have significant value, a general 'maintain where practicable' direction ensures a wider application. The approach of requiring practicable options also recognises situations where operations in, or supporting the productive areas of, forests have effects on areas of biodiversity surrounding the productive areas – for example, edge effects associated with harvesting.

We therefore recommend amending the clause to give an effects management direction for all those parts of plantation forests identified as SNAs, and all parts for Threatened and At Risk species. This will enable the continued operation of plantation forests, while allowing significant biodiversity to be maintained through practical measures to remedy and mitigate adverse effects.

Recommendations and decisions

Recommendations for managing adverse effects in plantation forests

13a) Retain a different effects management approach for plantation forestry in the NPSIB.

13b) Confirm this approach applies only to the operation of a plantation forest once established, and not to new planting within SNAs.

13c) Remove the concept of a 'plantation forest biodiversity area'.

13d) Confirm the provisions apply only where a plantation forest meets the significance criteria in Appendix 1 of the proposed NPSIB.

13e) Apply the same effects management approach to Threatened and At Risk (Declining) flora and fauna – that is, manage adverse effects during the course of consecutive rotations to maintain populations of species present.

13f) Require other indigenous biodiversity to be maintained, as far as practicable.

Minister's decision

Agree

14 Providing for established activities and maintenance of improved pasture for farming

Proposal consulted on

The NPSIB recognises established activities not currently captured by the RMA (existing activities). It provides for those activities that have already modified the indigenous vegetation and habitats of indigenous fauna in Aotearoa New Zealand and recognises that these activities make an important contribution to the social, cultural and economic wellbeing of people and communities, including the maintenance of improved pasture for farming. The intention of these provisions is to allow such established activities to continue, while ensuring the impact on indigenous biodiversity does not increase.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were:

- that clarity is needed regarding sections 10 and 20a of the RMA and whether this clause affects existing use rights
- whether provisions for established activities go too far
- whether provisions for established activities do not go far enough
- concerns relating to the pastoral farming provision/maintenance of improved pasture
- whether the scope of the clause relating to existing activities in the proposed NPSIB is too focused on pastoral farming.

Analysis

Submitters were generally supportive of the intent to provide for existing activities in the proposed NPSIB. However, general themes to improve the provision emerged, in particular to clarify what is intended to be captured. Further clarification will be provided in guidance and implementation material.

Clarity needed on sections 10 and 20A of the RMA

Submitters raised several concerns about this provision and the RMA, including:

- concerns about unnecessary duplication
- concern the provision will be applied more stringently than the RMA is applied
- general confusion about how the provision and sections 10 and 20A of the RMA interact.

The intent of the clause was to give more specificity around how councils must protect areas of significant indigenous biodiversity, while allowing certain activities to continue.

We acknowledge existing use rights are generally complex. We do not intend to complicate this process further by adding another layer to the process. Our intention is to add a mechanism so certain established activities can continue where and when appropriate, provided their impacts do not increase.

The provision recognises established activities have already modified the indigenous vegetation and habitats of the indigenous fauna of Aotearoa New Zealand, and these activities are important to social and economic wellbeing. Therefore, it is generally appropriate to provide for lawfully established (at the date of the gazettal of the NPSIB) activities in certain situations.

The NPSIB is not intended to impact on existing use rights established under the RMA. Section 10 of the RMA addresses existing use rights for land use. Under this section, land may be used in a manner contravening a rule in a district plan or proposed district plan if both of the following apply.

- The use was lawfully established before the rule became operative or the proposed plan was notified.
- The effects of the use are the same or similar in character, intensity and scale.

Section 10 does not apply to activities discontinued for a continuous period of more than 12 months after the new rule became operative or the proposed plan was notified.

Section 20A of the RMA provides for certain existing lawful activities to continue in certain circumstances. It provides a guide on when and for how long lawfully established activities can continue, when a new rule in a proposed regional plan now requires a resource consent for the activity. For example, if a proposed rule now requires a consent for an existing activity that was formerly permitted activity (or could have been lawfully carried out without a resource consent) it may continue until the plan becomes operative, if the factors in subsections 20A(1)(a) to (c) are present, or until a resource consent application is decided on.

We do not consider there to be a conflict between these provisions and the clause for established activities in the proposed NPSIB. Sections 10 and 20A of the RMA specify a limited protection of specific lawfully established existing uses when faced with a changing regional or district plan framework. This clause is intended to require councils to specify those established activities that should be allowed to continue when the plan changes and associated new rules are made to give effect to the NPSIB.

Provisions for established activities go too far in SNAs

Many submitters were concerned the clause was too permissive and stated activities should be more heavily regulated by the proposed NPSIB. Some submitters believed managing established activities was where biodiversity protection would be most effective. We agree with submitters that established activities have the potential to have negative impacts on indigenous biodiversity.

The clause is intended to provide for activities operating prior to the NPSIB coming into force and aims to strike the right balance between protecting indigenous biodiversity and enabling those activities to continue. On balance, we consider the intent of the clause acknowledges the importance of established uses of land, while recognising that the adverse effects of some land uses increase in scale and intensity – and that their effects can be cumulative, resulting in more indigenous biodiversity being lost. We believe this strikes the right balance. However, we propose further changes below to improve workability.

Provisions for established activities do not go far enough

Established activity criteria

Councils interpreted this clause to mean that if an activity did not qualify, it was no longer identified as an established activity and so the provision no longer applied. We agree with councils' interpretation and believe the current approach aligns with the principles and objectives of the proposed NPSIB, and that the criteria for the application of this clause should remain to maintain indigenous biodiversity adequately.

Some submitters expressed concern there is currently no clear direction on next steps (that is, a potential consenting pathway) if the qualifiers are not met and suggested clearer direction should be provided. In some circumstances the activity may be managed under other clauses. We recommend an additional subclause to clarify potential management approaches if the criteria are not met.

Application

Several submitters expressed concern about whether consented, but not yet implemented, activities would be allowed to continue. Consents issued prior to commencement of the NPSIB will still be valid, as they establish a lawful use of development.

Many submitters also asked for references to existing use rights provisions under the RMA to be removed from the definition of existing activities to allow those activities to continue. However, if this reference were removed from this definition, the clause could be interpreted as imposing additional regulation on the criteria for existing use rights and would be inconsistent with the RMA and possibly ultra vires.

Some submitters raised concerns this clause affected existing use rights provided for under sections 10 and 20A of the RMA. To clarify existing use rights still apply, for the avoidance of doubt, references to these clauses of the RMA have been added to the clauses to make it explicit they still apply. In addition, language has been updated to refer to 'established' rather than 'existing' activities, to reduce the potential for this confusion with existing use rights.

Submitters sought clarity on whether this clause applied to activities inside and outside SNAs. The activities themselves can be either inside or outside SNAs, but the focus is on the adverse effects on the SNAs. This is outlined in Policy 9 of the proposed NPSIB 'Certain established activities are provided for within and outside SNAs'. As such, we recommend amendments to clarify the application in the heading and within the clause.

Many submitters sought clarity on the specific activities that might be captured by this clause, with some suggesting that a list of them should be added to demonstrate the intent. However, the focus of this clause needs to be on the criteria that will enable established activities to continue, and the identification of these will be up to local authorities, to allow them to address local circumstances. Activities may vary between regions, and it is important that there is scope for application within the local context. Adding a list of possible activities would also introduce the risk of an inadvertent exclusion of some activities that may meet the criteria. We do not believe that a list within the clause would be appropriate; however, this kind of information may be included in guidance by way of example.

Replacement consents

Several submitters were concerned the proposed NPSIB as currently drafted has no ability for replacement consents to be considered. These submitters preferred the BCG's approach.

However, prior to consultation we received advice the clause in the BCG's draft that outlined replacements consents was ultra vires, so it was not included in the proposed NPSIB.

Provisions for infrastructure operations

Many infrastructure sectors were concerned there was not adequate provision for the maintenance of infrastructure, including the maintenance of access tracks, the roading network and transmission lines. Submitters from the horticultural and mining sectors, as well as from the renewable energy generation, transport and other infrastructure industries also raised this concern.

Many submitters with this view also preferred the BCG version of this clause. The BCG's draft NPSIB included two distinct policies: one that referred to replacement consents and one addressing existing activities. These policies recognised the contributions existing activities made to social, cultural and economic wellbeing, and provided for their continuation. The BCG policies also acknowledged there were situations where existing activities have had inappropriate effects on biodiversity and would require replacement consents. The BCG envisaged these circumstances would be identified in RPSs. However, it was found the BCG's draft on replacement consents was ultra vires, so this was not progressed further.

Several submitters requested 'carve-outs' for specific activities; however, there is a need to ensure alignment with the overall objective of the NPSIB to maintain indigenous biodiversity. In that regard, it would be inappropriate to provide a complete exemption or carve-outs where there is no other national guidance for the development or use that gives due consideration to indigenous biodiversity. In addition, it is more appropriate for councils to consider the application of these clauses in the local context.

We consider the recommended changes – to make the roles and responsibilities apply to all councils – would provide for specific activities to continue at councils' discretion, which is exactly what this provision is intended to do

We recommend additional text to clarify that maintenance, operations or upgrades may be managed in accordance with this clause, provided the criteria are met.

Concerns about clarity and consistency of drafting

Cumulative loss

Concerns were raised around the use of 'cumulative loss', particularly the difficulty in demonstrating cumulative loss has not occurred. However, satellite imagery is a useful tool for determining cumulative vegetation loss over time. Councils are also well versed in assessing cumulative effects under the RMA.

Concerns relating to pastoral farming provision/maintenance of improved pasture for farming

Additional provisions have been set out for the activity of pastoral farming. For clarity, we recommend that these provisions are set out separately from those for established activities, given the specificity of these provisions in providing clear pathways for pastoral farming. We recommend a new title to reflect the scope of the provision.

The provision requires councils to ensure their policy statements and plans recognise vegetation regeneration in areas previously cleared, except where the regenerated vegetation has become an SNA or where the periodic clearance is likely to compromise the protection or maintenance of indigenous biodiversity. Many submitters were concerned the pastoral farming provision does not achieve its intent to enable farming practices to continue.

Some submitters also expressed concern the provision fails to recognise the burden of proof for the existence of these activities will fall on landowners and historical record-keeping (which may not exist). They argued a strong regulatory approach could undermine existing and future conservation efforts. We consider existing aerial and satellite photography is sufficient to demonstrate historical clearance. The intent of this provision is to make a clear pathway for pastoral farming.

Other submitters were concerned that the clause did not go far enough to protect indigenous biodiversity. We are satisfied that the criteria for the maintenance of improved pasture to continue achieves the right balance in protecting biodiversity, while providing a pathway for pastoral farming activities to continue. We recommend a further criterion be added specifically to ensure protection for Threatened or At Risk (Declining) species.

Improved pasture

Submitters had differing views on the definition of 'improved pasture'. Some were concerned the definition was too broad, as this had caused problems in local areas in the past.

We received feedback the definition of 'improved pasture' could be improved by changing the word 'or' to 'and' so that it reads 'sown *and* maintained for the purpose of pasture production'. However, this would narrow the application of the clause and could have broader impacts in high country grazing areas, so no change has been recommended.

For consistency with the NPS-FM and to clarify what is meant by 'exotic pasture species' in the definition of 'maintenance of improved pasture', we recommend incorporating a reference to the *National list of exotic pasture species*.[60]

Uncultivated depositional landform

We received feedback the reference to depositional landforms that had not been cultivated was unclear. The intent was to protect depositional landforms that have not been cultivated; however, the wording used was causing some confusion. We recommend a minor amendment to clarify that the maintenance of improved pasture for farming may continue if the land is not an uncultivated depositional landform.

Periodic clearance

Concern was raised about a subclause stating the 'periodic clearance of vegetation that has regenerated inside an SNA is unlikely to compromise the protection of SNAs or the maintenance of indigenous biodiversity'. Submitters suggested this statement undermined the consideration of effects, as outlined in the rest of the proposed NPSIB. We agree and believe this should be removed from the reference.

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[60] Ministry for the Environment. 2022. *National list of exotic pasture species*. Wellington: Ministry for the Environment.

If plans and policy statements provide for the maintenance of improved pasture, those activities will no longer have to rely on the 'existing use rights' but rather can continue as activities outlined in the plans and/or policy statements. Existing use rights established under sections 10 and 20A of the RMA still apply.

These provisions recognise farming is a significant activity throughout Aotearoa New Zealand, providing a range of economic, social and cultural benefits, and that the periodic clearance of regenerating indigenous vegetation on improved pasture is often a standard, regular part of farming operations.

Definition of 'regular cycle'

Some submitters raised concerns the term 'regular cycle' did not have a specific timeframe associated with it and that this would lead to an inconsistent implementation of the provision. This provision does not determine a specific timeframe to avoid limiting or unnecessarily impinging on a pastoral farming activity not fitting a specific timeframe. We believe the timeframe itself does not need to be determined if it fits the criteria outlined in 'regular cycle'. As such, we recommend it remain as drafted but could be clarified through guidance developed alongside the provision.

Scope is too focused on pastoral farming

Some submitters believed the scope of the clauses relating to the maintenance of improved pasture put too great a focus on farming. This was heard mostly from industry groups with infrastructure located within SNAs. Consideration was given to whether the relevant subclause should be expanded to encompass all activities, rather than being limited to just pastoral farming. However, this provision was drafted specifically for pastoral farming due to the difficult and diverse environments in which it features. There are different approaches to provide for regularly cleared areas and manage other activities.

Recommendations and decisions

Recommendations for providing for established activities

14a) Change the heading and the wording to clarify the application to 'established' activities.

14b) Make it explicitly clear that existing use rights (sections 10 and 20A of the RMA) are not affected.

14c) Add references to maintenance, operation and upgrade, to clarify that such activities may fit within the category of established activities, provided the criteria are met.

14d) Amend to clarify that the clause applies both inside and outside SNAs and the need to focus on the effects of existing activities on SNAs rather than the locations of the activities themselves.

14e) Provide direction to the user on what happens when they do not meet the criteria for an established activity, that is, the activity is now considered a 'new activity' and is to be managed under other clauses as relevant.

14f) Move the provisions relating to the maintenance of improved pasture for farming to appear on their own in a clause titled 'Maintenance of improved pasture for farming'.

14g) Include a reference to the *National list of exotic pasture species* in the definition of 'exotic pasture species'.

14h) Amend the wording to clarify that the maintenance of improved pasture may continue if the land is not an uncultivated depositional landform.

14i) Add a subclause to specify that the maintenance of improved pasture may continue only if it will not adversely affect a Threatened or At Risk (Declining) species.

Minister's decision

Agree

15 Indigenous biodiversity outside SNAs

Proposal consulted on

Although SNAs contain the most significant indigenous biodiversity, a lot of other indigenous biodiversity exists outside them that can still be important.

The proposed NPSIB required RPSs to specify where, how and when subdivision, use and development outside SNAs should be controlled to maintain indigenous biodiversity. When councils make or change their plans to do this, they are required to give regard to the occupation use and development potential of Māori land to provide for social, cultural and economic wellbeing. Once the activity was specified, the provision then required that adverse effects be controlled through the effects management hierarchy.

These provisions also provided a process for the possible identification of SNAs outside the district-wide assessments. The process would be picked up through resource consents. The provisions stipulated councils were to identify where, how and when assessments against the SNA identification criteria should be done. We have recommended these aspects be picked up under the identifying SNA provisions.

The intent of the outside SNA provisions is for the management of adverse effects on indigenous biodiversity outside SNAs to be more flexible than is required in SNAs. For example, the intent is there is no requirement to avoid the key adverse effects. Instead, adverse effects should be addressed using the effects management hierarchy alone. In addition, these provisions should not apply to all adverse effects, but only a subset of adverse effects that are very important to manage.

Key issues from submissions

The key issues identified through submissions and subsequent analysis included whether the provisions:

- would prevent the productive use of land throughout Aotearoa New Zealand
- were practical and could be implemented effectively
- took approaches consistent with best practice and the RMA
- would provide transitional protection for SNAs.

Analysis

Many submitters agreed with the intent of controlling adverse effects on biodiversity outside SNAs. However, many issues were also raised about how the provisions had been drafted and what they were trying to achieve.

Concern with ongoing productive use of land throughout Aotearoa New Zealand

The proposed NPSIB stated councils must take steps to maintain indigenous biodiversity outside SNAs by specifying in their plans and policy statements where, how and when controls on subdivision, use and development must be created to maintain biodiversity. Many submitters believed this direction was very broad and were concerned it might restrict any activities where there could be indigenous biodiversity. The intent of this provision is to ensure

biodiversity is managed outside SNAs and to signpost we anticipate general provisions in council plans to do this. We believe this is necessary to achieve the maintenance of indigenous biodiversity in Aotearoa New Zealand.

Many submitters from the forestry and pastoral farming communities were unsure about how the outside SNA provisions related to other parts of the proposed NPSIB. The proposed NPSIB contained specific references to pastoral farming and managing adverse effects in plantation forests. Submitters from the forestry industry raised a concern the proposed NPSIB already specifically provided for their activities, and they were uncertain how the outside SNA provisions applied in forestry areas.

We acknowledge there are certain circumstances where a different approach to managing adverse effects is warranted and we have provided for this where we see it appropriate, particularly when managing adverse effects in and around SNAs. Given the objective of the NPSIB is to maintain indigenous biodiversity, safeguarding significant biodiversity must be prioritised over specified activities that can cause loss of indigenous biodiversity. Therefore, it would not be appropriate to provide a complete exemption or carve-out for any one activity type with no due consideration of indigenous biodiversity.

The intent of the outside SNAs provisions will not unduly affect specific activities, but rather acknowledge protecting SNAs alone will not result in the maintenance of biodiversity in Aotearoa New Zealand. We recommend making it clear that, despite their being otherwise stated in the proposed NPSIB, these provisions apply to all areas except those within SNAs and on Māori lands.

Concerns about implementation and practicality of proposal

Concerns were raised by submitters that these provisions only related to ‘general rules applying outside SNAs’ as per the heading of clause 3.13 in the proposed NPSIB. We consider these provisions should not be limited to rules, and should be expanded to objectives, policies and methods to achieve the outcome of ‘maintenance of biodiversity’. As such, we recommend altering the heading, so the provision is not limited to rules but objectives, policies and methods.

Many submitters considered the provisions would lead to general clearance rules for indigenous vegetation outside SNAs. Many councils wanted this to be made explicit if it was indeed the intent.

The intent of this provision is to protect indigenous biodiversity by controlling certain activities. This could be achieved through mechanisms such as vegetation clearance rules, spatial planning and earthworks controls.

Vegetation clearance was one of the activities considered when developing these provisions. We considered whether we should draft a policy to reference vegetation clearance specifically and address potential ambiguity but were concerned this might limit the ability of councils to create policy approaches to managing adverse effects on indigenous biodiversity outside SNAs where the activities did not cleanly fit under ‘clearance of indigenous vegetation’. To improve this provision, we recommend restructuring it to outline the outcome we are trying to achieve, rather than focusing on how that outcome is achieved.

Uncertainty

Submitters were also concerned a broad interpretation of the provision could result in a requirement for ecological assessments of all subdivision, use and development outside SNAs,

regardless of the locations. They argued this would add a significant economic burden to resource consent applications, as well as strain already limited ecologist resources. Submitters believed a clearer scope needed to be applied to the provisions to clarify when exactly the effects management hierarchy should be used outside SNAs.

We agreed the provisions could potentially be interpreted very broadly. To provide a very clear scope, we recommend limiting the provision to apply only to significant adverse effects on indigenous biodiversity outside SNAs. The term 'significant' is well known in the context of the RMA and will be easier to apply and clarify scope for council planners.

Applicability of general provisions outside SNAs

Sections 76(4A) to 76(4D) of the RMA prevents territorial authorities setting blanket tree-protection rules in 'urban environment allotments'.[61] Consequently, district plans can only set rules to protect trees in these areas if the trees and street addresses of legal descriptions of the properties are specifically identified in the plans. This means trees need to be mapped on a property-by-property basis – a resource-intensive and costly task. Therefore, these provisions would not apply to trees in urban areas unless the territorial authorities made specific rules that complied with sections 76(4A) to 76(4D) of the RMA.

As noted earlier, we have recommended the outside SNA provisions apply only to significant adverse effects (that is, those applying to large areas and very significant stands of trees) and are likely to result in plan rules such as indigenous vegetation clearance rules. It was never the intent these provisions would provide blanket protection for trees in urban allotments.

Providing consistency with best practice and the RMA

A question in the discussion document asked submitters if the provisions should allow for biodiversity offsetting and biodiversity compensation to be considered simultaneously when managing adverse effects to maintain indigenous biodiversity outside SNAs, or if biodiversity offsetting should be considered first. Submitters were divided in their opinions.

Submitters who were in favour of the proposed approach in the proposed NPSIB – where biodiversity compensation may be considered as an alternative to biodiversity offsetting – considered the approach (among other reasons):

- was sensible and pragmatic
- provided for flexibility
- distinguished the management of adverse effects outside SNAs from the management of adverse effects on SNAs.

Submitters in opposition to the proposed approach considered (among other reasons):

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[61] 'Urban environment allotment' means an allotment within the meaning of section 218 of the RMA:

(a) that is no greater than 4000 m^2

(b) that is connected to a reticulated water supply system and a reticulated sewerage system

(c) on which there is a building used for industrial or commercial purposes or as a dwelling house

(d) that is not reserve (within the meaning of section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.

- the proposed approach should align with international best practice and the New Zealand Local Government guidance for biodiversity offsetting under the RMA
- the sequential approach minimised harm to indigenous biodiversity
- no net loss and preferably net gain (as is achieved with an offset) was preferable to the uncertain gains achieved through biodiversity compensation.

We consider we need to follow best practice and the framework established by the RMA. We recommend the provision allows for compensation, considered as an alternative to biodiversity offsetting, be removed. In line with our other recommendations, the application of the effects management hierarchy outside SNAs will be limited, and we consider it appropriate that where it is used, it is used in full, as outlined in the NPSIB.

Transitional protection of SNAs

Another issue raised by some submitters was how to ensure SNAs (or would-be SNAs) not yet included in notified plans would be protected under the NPSIB. This was rightly raised given the risk that a 'goldrush effect' could occur prior to councils implementing all the NPSIB requirements, with landowners clearing as much indigenous vegetation as possible to stop it later being identified as SNAs.

It was always intended that this provision would apply to areas that were not yet SNAs but that could be SNAs. However, the wording 'outside SNAs' has been interpreted by some to completely exclude SNAs from consideration altogether, even though areas outside SNAs can become SNAs later. We are not recommending a change in the title of the provisions to clarify this, but we are recommending the structure of the provisions be changed to clarify when and where they apply. We recommend the requirement for local authorities to apply the effects management hierarchy outside SNAs is upfront in the provisions, with further wording following that local authorities must also change their policy statements and plans to give effect to the provisions. This brings the application of the effects management hierarchy to significant adverse effects outside SNAs into effect immediately. Councils will need to consider it.

Recommendations and decisions

Recommendations for managing adverse effects on biodiversity outside SNAs

Changes to clause 3.13:

15a) Clarify that the provisions apply to all areas outside SNAs (except Māori lands).

15b) Alter the heading so the provision is not limited to rules; it can also include objectives, policies and methods.

15c) Structure the provision to focus it on the desired outcome (the management of adverse effects on indigenous biodiversity).

15d) Ensure that the provision only requires the use of the effects management hierarchy outside SNAs for significant adverse effects.

15e) Remove the ability for councils, when applying the effects management hierarchy to adverse effects outside SNAs, to consider biodiversity compensation alongside biodiversity offsetting.

15f) Structure the provision to ensure that local authorities must apply the effects management hierarchy to significant adverse effects on indigenous biodiversity outside SNAs immediately to prevent potential ‘goldrushes’.

Minister’s decision

Agree

16 Use of and development on Māori lands

Proposal consulted on

Providing for activities on Māori land is important for historical and cultural reasons and because of the barriers to the full and optimal use of Māori land for economic development that have arisen through the history of Aotearoa New Zealand. Māori land is less likely to have been developed and more likely to have retained its indigenous cover due to historical limitations placed on it. Accordingly, the proposed NPSIB provided a more enabling regime for managing the effects of development on SNAs located on Māori land. Thus, it did not require avoidance of the main adverse ecological effects, but instead applied the effects management hierarchy where a proposed activity was previously in a 'Medium' value SNA and:

- was for the provision of papakāinga, marae and ancillary community facilities associated with customary activities
- would contribute significantly to enhancing the social, cultural or economic wellbeing of tangata whenua.

In addition, two threshold tests had to be met – namely that there was:

- an operational or functional need for the activity to be in the SNA
- no practicable alternative location for the new subdivision, use or development.

The need to provide appropriately for Māori land was also recognised in the provision for managing indigenous biodiversity located outside SNAs. This required local authorities to consider the potential of Māori land to provide for the social, cultural, and economic wellbeing of Māori when managing indigenous biodiversity. The proposed NPSIB also specifically required councils to consider the use of incentives for restoration and enhancement on Māori land in recognition of the opportunity cost of maintaining indigenous biodiversity on that land. Clause 3.7 in the proposed NPSIB required councils to recognise factors contributing to social, economic and cultural wellbeing in implementing the NPSIB, including:

- ensuring the maintenance of indigenous biodiversity did not preclude subdivision, use and development in appropriate places and forms, within appropriate limits
- the importance of respecting and fostering the contribution of landowners as stewards and kaitiaki
- the importance of forming partnerships between local authorities, tangata whenua, landowners, people and communities in maintaining and enhancing indigenous biodiversity.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were:

- the appropriate definition of Māori land
- the appropriate extent of the management of adverse effects on SNAs on Māori land and if the provisions unfairly restrict subdivision, use and development or, conversely, are too permissive
- the relationship with the sustainable logging of native forest.

Analysis

Extent of land addressed by provisions on Māori land

The definition of Māori land in the proposed NPSIB is 'Māori customary land and Māori freehold land as defined in Te Ture Whenua Māori Act 1993'.

Most submitters on this point considered this definition too narrow. Suggestions for what should be included in the definition were:

- land returned to iwi and hapū through Treaty settlements
- land held under the Public Works Act 1981
- all land acquired by tangata whenua.

We consider the suggested categories below.

Land transferred or vested as part of a Treaty settlement

We recommend land transferred or vested as part of Treaty settlements be included in the definition of Māori lands. This means that Treaty settlement land is covered by the more flexible Māori lands provisions. This is because it could be disproportionately affected by the provisions of the NPSIB resulting from the extent of indigenous biodiversity on the land and the estimated higher proportion of land parcels with more than 90 per cent coverage as SNAs. Barriers to development would be compounded by stringent SNA protection, because this land is often also less productive. There is little crossover between both Treaty settlement land and productive land use classifications (most is Land Use Classification classes 6 to 8).

We also recommend other land held by or on behalf of an iwi or 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 the mana whenua over the land) also be included in the definition of Māori lands, for completeness.

Land returned after being held for public works

We do not recommend the definition cover land returned after being acquired for public works (where this land was originally Māori land and has been returned to its original owners). This ensures consistency with the RMA and with the core definition of protected Māori land in the NBE Bill. There are practical difficulties with applying this category of land, because there is no central register of such land and whether it remains in Māori ownership can only be verified by personal inquiry.

Māori reservations and reserves

We consider the definition should also cover Māori reservations under section 338 of Te Ture Whenua Māori Act 1993. A reservation can be established for various reasons, not just to hold land vacant. A reserve may be set apart[62]

> … for the purposes of a village site, marae, meeting place, recreation ground, sports ground, bathing place, church site, building site, burial ground, landing place, fishing ground, spring, well, timber reserve, catchment area or other source of water supply, or place of cultural, historical, or scenic interest, or for any other specified purpose.

[62] Te Ture Whenua Māori Act 1993, s 338.

Therefore it is important Māori reservations are also covered by the definition of Māori lands, so the NPSIB does not conflict with the purpose of reservations.

Māori reserves under the Māori Reserved Land Act 1955 are vested in the Māori Trustee and are inalienable. As such, they are equivalent to Māori freehold land as defined in Te Ture Whenua Māori Act 1993 and should also be included in the definition and be subject to the same management approach.

Legal entities and land in other ownership structures

We recommend two other categories for consistency with the NPS-HPL and NBE Bill definitions – for land with legal entity status like Te Urewera land, and land held in a different ownership structure (like the Tāmaki Makaurau maunga).

Lands in these categories have been the subject of Treaty settlements but are not in the same category as Treaty settlement land, because they are either legal entities (not being owned by a Post-Settlement Governance Entity), or they are held in a different ownership structure.

These categories are included to ensure the activities necessary to manage the land according to relevant management plans are not restricted by the RMA plan provisions made to give effect to the NPSIB. We recommend clarifying in the NPSIB provisions for Māori lands that the relevant management strategies prevail over plan rules, and that 'owners of Māori lands' include managers of these lands.

Other considerations

We considered using the term 'ancestral land' in the definition of Māori lands. However, this term is used in section 6(e) of the RMA in the context of the relationship between tangata whenua and their ancestral lands, which may endure beyond land ownership – that is, that even when land has been transferred out of tangata whenua ownership, it may continue to be considered 'ancestral land'. In contrast, the provisions of the proposed NPSIB that apply to Māori lands are location based and are intended to apply for the benefit of land retained or held by tangata whenua for them to develop the land. Land no longer under the ownership of tangata whenua cannot be developed by them. Therefore, we do not consider that the definition of Māori lands should refer to 'ancestral land', as it is not appropriate in this context.

Appropriate extent of the management of adverse effects on SNAs on Māori lands

Most submitters on this issue considered the proposed NPSIB did not provide adequately for the development of Māori lands. Iwi/Māori voiced strong opposition to clause 3.9 of the proposed NPSIB because of its potential to restrict development opportunities and result in costs. Generally, they considered the impact of the provisions on Māori lands would be too great. They considered the proposed NPSIB failed to mitigate the effects on Māori lands and would compound historical disadvantages. Many also considered the provisions undermined rangatiratanga. Almost all councils that submitted on this issue also opposed the provisions and had concerns about their impacts on Māori lands. Conversely, only a few submitters considered Māori lands should not be treated differently from other land to which the proposed NPSIB applies.

Should Māori lands be exempt from the NPSIB?

Some iwi/Māori submitters requested Māori lands be exempt from the NPSIB. However, this would not avoid RMA planning provisions for the maintenance and protection of indigenous

biodiversity. This is because, under the RMA, local authorities have a continued function for the maintenance of indigenous biodiversity. They are required, as a matter of national importance, to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

Retaining Māori lands in the management framework of the NPSIB will provide clarity to local authorities on how to fulfil these functions – and how to do so together with tangata whenua. The need to care for indigenous biodiversity is consistent with kaitiakitanga. The proposed NPSIB is framed to recognise the role of kaitiaki, to involve tangata whenua and to incorporate te ao Māori perspectives and mātauranga Māori into indigenous biodiversity management. We consider that including the management of effects on Māori lands is consistent with these matters and will help to ensure this approach is applied nationally, increasing certainty and efficiency. In addition, the proposed NPSIB was developed on the basis it would apply to all land ownership types, whether general private land, Māori land or public land. Any change from this approach would be significantly different from what was consulted on. Therefore, we do not recommend exempting Māori lands from the NPSIB.

Applicable provisions

The strongly voiced and majority opposition to subclauses 3.9(2)(d)(iii) and (iv) shows that these provisions need to change, to reduce barriers to the development of Māori lands. Tangata whenua and councils were overwhelmingly opposed. Owners of Māori lands face significant challenges to enable development. We understand from discussions with councils they prefer to work with tangata whenua to develop local solutions to enable papakāinga and development, while maintaining and protecting indigenous biodiversity.

On balance, we consider the provisions in the proposed NPSIB are too restrictive on Māori lands and constitute significant barriers to development aspirations. Consequently, we recommend amendments be made to recognise the unique constraints imposed on Māori lands and give effect to Te Tiriti o Waitangi/The Treaty of Waitangi, while still protecting SNAs and taonga. The need to support development on Māori land has long been recognised and has been the subject of many government initiatives. Therefore, this needs to be appropriately enabled, as does the protection of indigenous biodiversity. The changes we recommend are outlined below.

A partnership approach

The proposed NPSIB seeks to enhance the role of tangata whenua in decision-making about the indigenous biodiversity of Aotearoa New Zealand and to incorporate tikanga and mātauranga Māori into the management of indigenous biodiversity in the RMA.

Consistent with this, we recommend local authorities be directed to partner with tangata whenua, and owners of Māori lands, in managing the adverse effects of activities on indigenous biodiversity located on Māori lands.

A partnership approach is consistent with the RMA requirement for councils to consider the principles of The Treaty of Waitangi/Te Tiriti o Waitangi, which include the principle of partnership. This means a positive duty to act in good faith, fairly, reasonably and honourably towards each other.

The partnership approach is consistent with the intent of the NPSIB and in particular clause 3.3, which addresses how councils can meet RMA obligations in relation to The Treaty of Waitangi/Te Tiriti o Waitangi when making decisions about indigenous biodiversity. This

includes, for example, providing a greater role for tangata whenua in management and decision-making for indigenous biodiversity, providing for mātauranga Māori and tikanga Māori, and providing for customary use. Many councils are already using a partnership approach with tangata whenua in developing their plans.

A more flexible and holistic framework for managing indigenous biodiversity on Māori lands

We recommend a standalone provision be included in the NPSIB for Māori lands and that the provision in subclause 3.9(2)(d) for Māori land be removed, with it being made clear that clause 3.9 does not apply to Māori lands. The separate provision would include a more flexible framework, to let local authorities work in partnership with tangata whenua and owners of Māori lands to manage the effects of occupation, use and development on indigenous biodiversity, including on SNAs, and to enable occupation, use and development. We recommend this provision reflect the elements of subclause 3.9(2)(d) but be less prescriptive and enable the application of these elements in ways better suited to Māori lands.

This more flexible approach is considered warranted given historical disadvantages, the extent of indigenous biodiversity on Māori lands, and the Treaty of Waitangi/Te Tiriti o Waitangi principles. It is important for barriers to be removed so tangata whenua can exercise their tino rangatiratanga over their land, including using it to achieve their aspirations. We recommend this clause facilitate the occupation, use and development of Māori lands, while still maintaining indigenous biodiversity, by:

- loosening constraints and enabling the future development of Māori lands in a less prescriptive way, without requiring threshold tests
- reducing the extent of any resource consents for effects of activities on SNAs, and consequently reducing costs
- strengthening the involvement of tangata whenua in the process of managing indigenous biodiversity on Māori lands
- increasing certainty on local authority partnership requirements.

We recommend councils be required to work with tangata whenua and owners of Māori lands to develop objectives, policies and methods to maintain and restore indigenous biodiversity, and to protect SNAs and identified taonga located on Māori lands, and in doing so:

- enable the development, occupation and use of the Māori lands to support the social, cultural and economic wellbeing of tangata whenua, including papakāinga, marae and ancillary community facilities and associated infrastructure and dwellings
- allow the sustainable customary use of indigenous biodiversity according to tikanga
- realise opportunities to provide incentives for indigenous biodiversity protection on specified Māori lands.

This would provide a framework to enable councils, tangata whenua and owners of Māori lands to develop a local approach for the lands that both enables development and cares for indigenous biodiversity. This could be at a bespoke level of a land block, or across a district, depending on circumstances. To enable a holistic approach, we recommend this clause apply to all indigenous biodiversity on Māori lands, so provisions can be developed in this way for SNAs, and outside SNAs, and for taonga species. We do not recommend the effects management hierarchy be applied – rather, that where SNAs or taonga are located, alternative approaches are considered that avoid, minimise or remedy adverse effects on these. However,

given the extensive indigenous vegetation cover on Māori lands and the greater proportion of land parcels that have more than 90 per cent SNA coverage, we recommend requiring councils to recognise there may be limited alternative locations. We also acknowledge that in some cases offsetting and compensation may be appropriate mechanisms.

It is noted, however, that the NPSIB includes specific provisions on geothermal SNAs, and on SNAs in plantation forests. These latter provisions will apply to those SNAs even if they are on Māori lands, including Treaty settlement land. However, if Māori lands, including Treaty settlement land, ceases to be used for plantation then the Māori lands provision applies.

We tested a draft of the Māori lands clause during the exposure draft process. There was considerable support from tangata whenua and councils. Submissions from tangata whenua and engagement with Iwi Leaders Technicians showed there was still concern that development aspirations would be subordinate to indigenous biodiversity protection, and that the historical disadvantages of the land would not be understood or considered by councils when working with them. Given the extent of indigenous biodiversity on these lands, and the current and historical barriers to development, we recommend the Māori lands clause clarify there may be circumstances when development prevails over indigenous biodiversity. We also recommend a requirement for councils to recognise historical barriers faced by tangata whenua in developing these lands. We anticipate that these mechanisms would encourage tangata whenua and owners of Māori land to engage with councils to develop planning provisions that protect and manage indigenous biodiversity and enable development.

Some Treaty settlement land is subject to legislation or covenants to protect indigenous biodiversity, and we do not expect the development-focused parts of this clause to apply to these. We recommend making this clear, as it is inappropriate to enable development on these types of Māori land.

Incentives for indigenous biodiversity protection

The reference to ‘opportunities to provide incentives for indigenous biodiversity protection on Māori lands’ reflects a provision originally suggested for Māori land by the BCG. It is included in clause 3.16 of the proposed NPSIB for restoration and enhancement. We consider that the incentives for indigenous biodiversity apply equally well to the use and development of Māori land in general as they do to restoration and enhancement. We recommend the incentives be included in the provisions for Māori lands and restoration.

Relationship with identified taonga

For clarity, we note that our recommendations in clause 3.14 ‘Identified taonga’ are to manage the effects of activities on identified taonga on Māori lands according to the provisions for Māori land.

Recommendations and decisions

Recommendations for the use and development of Māori land

16a) Extend the types of land addressed by the definition of Māori land so that, as well as Māori customary and freehold land under Te Ture Whenua Māori Act 1993, it includes:
- Treaty settlement land

- Māori reservations under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953
- 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
- Māori reserves under the Māori Reserved Land Act 1955
- land that forms part of a natural feature and is a legal entity, such as Te Urewera
- the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

16b) Remove the provisions in subclause 3.9(2)(d) relating to Māori land and replace them with a new provision for Māori land and Treaty settlement land that:

- requires local authorities to partner with tangata whenua and owners of Māori lands to develop objectives, policies and methods to maintain and restore indigenous biodiversity, and to manage adverse effects on indigenous biodiversity, and on SNAs and identified taonga, of occupation, use and development of Māori lands and, in doing so:
  - enable new occupation, use and development of Māori lands to support the social, cultural and economic wellbeing of tangata whenua
  - enable the provision of new papakāinga, marae and ancillary community facilities, dwellings and associated infrastructure
  - realise opportunities to provide incentives for indigenous biodiversity protection on specified Māori lands
  - enable alternative approaches to or locations for new occupation, use and development that avoid, minimise or remedy adverse effects on SNAs or identified taonga and enable options for offsetting and compensation
  - recognise and be responsive to the fact that there may be no or limited alternative locations for tangata whenua to occupy, use and develop their lands
  - recognise that there are circumstances where development prevails over indigenous biodiversity
  - recognise and be responsive to historical barriers that tangata whenua have faced in occupying, using and developing their ancestral lands.

16c) Clarify that the framework outlined above also applies to managing effects on identified taonga that are SNAs, or that are in SNAs on Māori lands.

16d) Clarify that the development-focused parts of the provision do not apply to the lands covered by legislation or covenants to protect indigenous biodiversity.

16e) Clarify that owners of Māori lands include:

- managers of land that forms part of a natural feature and is a legal entity
- managers of land that is the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014
- trustees of Māori lands.

16f) Clarify that the Māori lands provision does not apply to geothermal SNAs or SNAs in plantation forests, but that if Māori land ceases to be used for plantation forestry, then the Māori lands provision applies.

Minister's decision

Agree

17 Considering climate change in biodiversity management

Proposal consulted on

Policy 3 of the proposed NPSIB required councils to support the resilience of indigenous biodiversity to the effects of climate change. Clause 3.5 required local authorities to promote this resilience by:

- providing for the maintenance of ecological integrity through natural adjustments of habitats and ecosystems
- considering the effects of climate change when making decisions on restoration
- managing new biosecurity risks
- maintaining and promoting the enhancement of connectivity between habitats.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were:

- climate change effects are complex, difficult to quantify and often highly uncertain, making the policy difficult to implement
- whether the NPSIB should require adverse effects on the resilience of indigenous biodiversity to be addressed at a resource consent level
- whether the NPSIB should address the role indigenous biodiversity plays in climate change mitigation
- the need to identify linkages between the proposed NPSIB and other government proposals and ensure clarity of meaning and consistency of wording.

Analysis

The climate change provision was largely supported by submitters.

Climate change effects are complex

Many submitters commented that climate change effects are complex, difficult to quantify and often highly uncertain, making the policy difficult to implement. Several submitters believed, because of the complexity and uncertainty of climate change, the provisions may further restrict new development. Others stated the policy would benefit from more guidance and national-level implementation.

We do not support calls for the exclusion of a climate change provision on the grounds of the complexity and uncertainty of the topic. Section 7(i) of the RMA requires decision-makers to have ‘particular regard to the effects of climate change’. Therefore, the NPSIB should be clear on how this should happen in a biodiversity context to assist decision-makers in meeting the requirements of the RMA. We agree national-level guidance to help councils in dealing with the complexity of addressing climate change more widely will assist with the success of implementing this policy as well.

Addressing climate change matters at resource consent level

The provisions relating to climate change in the proposed NPSIB included Policy 3 'to support the resilience of indigenous biodiversity to the effects of climate change' and clause 3.5, which referred to policy statements, plans and RBSs. They did not refer to which adverse effects were to be considered during resource consent decision-making.

The climate change policy was tested through council engagement during the development of the BCG's draft NPSIB. Initial responses highlighted the practical challenges associated with applying a climate change policy at a resource-consent level, also that climate change policy is best targeted at a strategic policy level. Given this, councils need flexibility in how, when and where this clause is most appropriately applied in their local contexts. On this basis, we recommend the clause be more widely worded with a focus on the promotion of resilience, requiring it to apply to decision-making only in certain areas relating to restoration and biosecurity.

Role of indigenous biodiversity and climate change

Several submitters stated the proposed policy did not recognise the contribution of indigenous biodiversity to mitigating the effects of climate change. Submitters also stated the focus of councils should be on management approaches allowing indigenous biodiversity to respond to the inevitable impacts of climate change. Submissions from local government stated the NPSIB should reflect indigenous biodiversity as a key tool in mitigating and protecting communities from the impacts of climate change.

The proposed NPSIB focused on climate change adaptation (that is, promoting the resilience of indigenous biodiversity). Section 7(i) of the RMA requires decision-makers to have 'particular regard to the effects of climate change'. The purpose of the NPSIB is not to determine how biodiversity should be managed to address other resource management issues (such as climate change) but rather how it should be managed to ensure its maintenance. It is appropriate that the majority of the NPSIB retains a climate-adaptation lens, with a focus on the impacts of climate change on biodiversity maintenance. However, we do recommend the NPSIB acknowledges how biodiversity can help mitigate the effects of climate change. As such we recommend councils recognise the role of indigenous biodiversity in mitigating the impacts of climate change.

The wider value of an NPS in protecting indigenous biodiversity is not set out in the proposed NPSIB; rather it is set out in an analysis of options to address the problem definition in the Regulatory Impact Statement.

Links with other government proposals

Some submitters discussed how the proposed NPSIB addresses linkages between current climate change policy and legislative proposals, such as the Emissions Trading Scheme, which provides incentives for large-scale afforestation. The proposed NPSIB does not comment specifically on afforestation or how this should occur. However, it does require councils to prepare RBSs, which could provide an avenue for the relevant legislation to be considered as part of a wider biodiversity strategy. An RBS should be a 'landscape-scale restoration and enhancement vision' and could identify areas where afforestation (particularly of indigenous species) may be desired.

Some submitters queried the relevance of biosecurity risks to the NPSIB. Conversely, one submitter discussed the link between the proposed NPSIB and the Biosecurity Act 1993, stating they would like to see increased alignment between the two to recognise that biosecurity risks are likely to increase due to the changing climate. The NPSIB recognised new and existing biosecurity risks because of climate change. Therefore, we suggest it already has links to issues addressed by the Biosecurity Act 1993, and these are necessary to address changing impacts because of climate change.

Other submissions highlighted the need for further clarification on the linkages between the proposed NPSIB and other legislation, particularly other national direction. This goes beyond just the matter of climate change and is covered further in section 25 of Part B, below.

Recommendations and decisions

Recommendations for the consideration of climate change in biodiversity management

17a) Remove the specific reference to local authorities 'making and changing of policy statements and plans', and focus on the promotion of resilience and amending wording for clarity.

17b) Add a new subclause to recognise the role of indigenous biodiversity in mitigating the impacts of climate change.

Minister's decision

Agree

18 Applying a precautionary approach to managing indigenous biodiversity

Proposal consulted on

The proposed NPSIB required local authorities to adopt a precautionary approach for managing indigenous biodiversity. The intent of this provision is to ensure a precautionary approach is adopted in decision-making where the effects on indigenous biodiversity are not clear and are potentially significantly adverse or irreversible. This approach acknowledges it is not always possible to have clear information. It favours caution in decision-making when there is a threat of significant or irreversible damage.

Key issues from submissions

Almost half (49 per cent) of the respondents in the proposed draft consultation supported the inclusion of a precautionary approach, and just over one-quarter (27 per cent) were against this. The key issues identified through submissions and the subsequent analysis were as follows.

- The precautionary approach is already inherent in the RMA.
- The provision will be overly restrictive.
- Further clarity is required.
- The use of 'local authorities' in drafting is problematic.
- Adaptive management should be included as a precautionary approach.

Analysis

Precautionary approach is inherent in the RMA

Although we agreed with the views of some submitters, the idea of a precautionary approach is inherent in the RMA. We also agreed with other submitters that, despite this, it should also be included in the NPSIB to make explicit a concept that is only implied – especially due to its inclusion in the ANZBS[63] and NZCPS.[64]

Precautionary approach is restrictive

Some submitters considered that the inclusion of a precautionary approach created greater uncertainty. It is a concern that has been raised before regarding prior documents, which was ultimately dismissed in favour of incorporation. The inclusion of the precautionary approach under other legislation and RMA national direction (such as the NZCPS) has been considered in case law, and its interpretation and application have been well developed. This will carry over to the interpretation of its use in the context of the NPSIB. Overall, the precautionary approach has not presented a significant barrier to development, and it is an important safeguarding

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[63] Department of Conservation. 2020. *Te Mana O Te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020*. Wellington: Department of Conservation.

[64] Department of Conservation. 2010. *New Zealand Coastal Policy Statement*. Wellington: Department of Conservation.

tool in managing indigenous biodiversity that will help to prevent the permanent loss of indigenous biodiversity.

Further clarity is required

Several submitters commented on the 'vagueness' of the precautionary approach and the need for greater clarity. One submitter suggested the precautionary approach should not be adopted in the identification of SNAs or other areas to be protected or in the rule framework. It is evident that there is some uncertainty about when the precautionary approach should be applied. We have recommended minor changes in the wording to give greater clarity as to when councils should apply a precautionary approach in their decision-making. This will also give the policy better alignment with the ANZBS.

The intent of Policy 2 is that the precautionary approach is applied to decision-making when considering policies and proposals. It is not intended to create an overly restrictive rule framework. Rather, the precautionary approach should be considered in AEEs – that is, when evidence (or a lack of evidence) is presented for consideration at the resource consent stage.

We agree with the submissions that guidance is needed to give effect to the policy, although some guidance is already available as part of the ANZBS package, and the approach has been defined in case law. Providing supplementary guidance will help clarify the provision, where it should apply and help decision-makers to determine what is considered 'uncertain', 'unknown' or 'little understood'.

Use of local authorities' terminology

Some councils drew attention to the fact that Policy 2 and clause 3.6 referred specifically to local authorities. They suggested the scope for decision-makers applying a precautionary approach should extend beyond local authorities, as 'local authorities are not the only decision-makers under the RMA' and 'this provision should be widened in scope'.

In the RMA, 'local authority' means a regional council or territorial authority. Other entities can also have the powers of local authorities, and other decision-makers under the RMA would be required to have regard to the NPSIB. However, the NPSIB sets out an objective and policies related to maintaining indigenous biodiversity, and its intent is to specify what local authorities must do to achieve these objective and policies. Therefore, we propose the use of 'local authorities' be retained.

Adaptive management

Submitters from the infrastructure and local government sectors requested including adaptive management as a mechanism for achieving the precautionary principle. Adaptive management is a tool for enabling the precautionary approach to manage adverse effects. However, the principle of adaptive management is that all effects are reversible. This may not be possible when applying the effects management hierarchy, as offsetting and compensation are applied on the assumption that impacts are not reversible. For these reasons we recommend it is not included in the NPSIB, but it might be appropriate to refer to it as a useful tool in any guidance.

Recommendations and decisions

Recommendations for applying the precautionary approach

18a) Minor amendments to clarify when to apply the precautionary approach and to align with the wider use of the approach in government policy.

18b) Simplify the wording of Policy 2 relating to the precautionary approach.

Minister's decision

Agree

19 Geothermal SNAs

Proposal consulted on

Section C.9 of the discussion document set out options for how the NPSIB will manage geothermal ecosystems. The options were indicative only, with the intention of refining them down to a preferred approach following public consultation. The options were as follows:

1. Status quo for all geothermal ecosystems, which would continue to be managed under relevant policy statements and plan provisions without NPSIB direction (geothermal ecosystems out of scope).
2. Status quo for geothermal ecosystems in the Taupō Volcanic Zone (TVZ) only, with the NPSIB applying outside this area.
3. Including a specific framework in the NPSIB applying to all geothermal ecosystems.
4. An alternative option.

The intent of these options was to recognise a specific approach is required in the NPSIB for geothermal ecosystems' management due to:

- their rarity
- iwi/Māori rights and interests
- their existing use and practice in council plans
- their importance for renewable electricity generation
- the requirements of the NPS-REG.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were:

- the value of the NPSIB in protecting and managing geothermal ecosystems
- the preferred option for managing geothermal ecosystems, which was option 3 – with some changes
- the importance of working with iwi/Māori, councils and industry on the preferred option
- how to reflect, and not undermine, existing good management practices that balance protection and use and give effect to the NPS-REG
- the need to integrate iwi/Māori rights and interests.

Analysis

Value of NPSIB in protecting and managing geothermal ecosystems

Most submitters preferred option 3 in the discussion document, which put geothermal ecosystems in the scope of the NPSIB, using a bespoke approach. Those who preferred this option considered the NPSIB should facilitate the management of unique and rare ecosystems. The Bay of Plenty Regional Council and the Waikato Regional Council, which are responsible for managing most of the geothermal areas of Aotearoa New Zealand, were concerned carving out geothermal ecosystems from the scope of the NPSIB would erode its value and would not promote consistent protection or sustainable management.

Iwi/Māori views

We gauged the views of iwi/Māori on geothermal ecosystem management and the role of the NPSIB through regional hui, submissions and further targeted hui post-consultation. There was a strong signal from iwi/Māori that geothermal ecosystems should be managed regionally, in partnership with mana whenua and in a way providing for tino rangatiratanga. Some iwi/Māori specifically noted a preference for option 1, which consisted of geothermal ecosystems being outside the scope of the NPSIB.

Concerns with including geothermal ecosystems in the scope of the NPSIB included that this might jeopardise local protection and aspirations, even unintentionally, and could restrict rangatiratanga. Some considered local management enables geothermal taonga to be managed in a culturally appropriate and sustainable way, in accordance with tikanga.

The perceived value of including geothermal ecosystems in the scope of the NPSIB was that it will provide for integrated, holistic management and could direct local management that enabled tangata whenua to exercise their right as kaitiaki, in line with statutory acknowledgements. It was noted by one iwi the NPS-REG is currently the only piece of national direction that touches on geothermal ecosystems, and this might be skewing priorities towards geothermal energy use.

Several iwi/Māori considered that, if it is decided geothermal ecosystems are in the scope of the NPSIB, councils could:

- be directed to work with tangata whenua at place
- direct the consideration of iwi environmental management plans
- integrate a consideration of cultural values
- direct active management to address degradation from pests/weeds and unconsented activities
- direct the use of a precautionary approach regarding adverse effects
- direct an approach adaptive to future uses of the geothermal resource.

Strong messages emerged, including:

- the need to recognise the uniqueness, history and cultural importance of each ngāwhā/geothermal area
- that tangata whenua should be recognised as kaitiaki and should be at the decision-making table at all levels
- the need to recognise iwi/hapū/whānau face resource issues affecting their capacity to engage in resource management decision-making.

Geothermal ecosystems are in scope

We conclude there is significant value in geothermal ecosystems being in the scope of the NPSIB.

Geothermal ecosystems are among the rarest and most distinctive natural systems in Aotearoa New Zealand – home to unique collections of plants, animals and microorganisms. They are classified as naturally uncommon (rare even before human colonisation). Four of the five geothermal ecosystem types found in Aotearoa New Zealand are critically endangered (small areas of occupancy and under serious threat). Their high conservation values validate their inclusion in the NPSIB. This is further supported by the rationale for the NPSIB, which includes

improving consistency in indigenous biodiversity management under the RMA, clarifying minimum standards required to maintain indigenous biodiversity, and raising the value and profile of indigenous biodiversity in decision-making.

We acknowledge the concerns iwi/Māori have raised about geothermal ecosystems being in scope. We also acknowledge submitter concerns that existing management frameworks are not undermined by a decision to include geothermal ecosystems in scope, and the direction should support the achievement of the Government's renewable electricity and zero carbon goals. However, we consider these concerns can be addressed in the detail of how geothermal ecosystems are included. We believe it is justified to include geothermal ecosystems in the NPSIB. We note the NPSIB will not apply to geothermal renewable electricity generation in geothermal SNAs, which instead will be covered by the amendments proposed in the National Policy Statement on Indigenous Biodiversity consultation document[65] discussed in section 12 of Part B, above.

Preferred option for geothermal ecosystems

Although option 3 was favoured in principle by submitters, amendments to the proposal set out in the discussion document are required (as discussed below).

Based on what we heard, we consider the proposal must meet the following key principles.

1. Existing good management practices should be reflected, not undermined.
2. Existing activities should be enabled.
3. Geothermal ecosystems are rare and unique and should be protected.
4. The importance of, and need to provide for, iwi/Māori rights and interests.
5. The importance of integrated management must be reflected.

The NPSIB context for option 3

Option 3 in the discussion document (which included having a specific management framework for geothermal ecosystems in the NPSIB) was developed in the context of the proposed NPSIB that went out for consultation. The proposed NPSIB required the identification and classification of SNAs into High and Medium value categories, using criteria set out in appendices. Given their rarity, all geothermal ecosystems would likely be identified as High SNAs based on the approach used in the proposed NPSIB. Thus, management under the proposed NPSIB would mean little or no new development could occur. This would risk conflict with iwi/Māori rights and interests.

The recommendations outlined in other parts of this report alleviate some of these concerns. They include, for example, the recommendation to remove the High/Medium SNA split and to extend the use of the effects management hierarchy to manage any adverse effects of the specific activities listed in the NPSIB on any SNA.

These recommendations enable geothermal resources on Māori lands where this will support the social, cultural or economic wellbeing of tangata whenua. However, although these changes would mitigate some of the concerns that prompted the development of option 3

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[65] Ministry for the Environment and Department of Conservation. 2020. *He Kura Koiora i hokia | A proposed National Policy Statement on Indigenous Biodiversity – Summary of submissions.* Wellington: Ministry for the Environment.

(and go some way to meeting the key principles), we do not think they are enough. They could still undermine existing good management practices, including protection for geothermal ecosystems.

In Aotearoa New Zealand, geothermal ecosystems exist predominantly in the TVZ, which extends through much of the Bay of Plenty and Waikato regions.

The Bay of Plenty and Waikato Regional Councils have established nuanced management frameworks in the TVZ that balance use and protection by classifying the geothermal systems into management units, each of which has a unique management purpose. For example, at one end of the spectrum are Protected Systems, where adverse effects on significant geothermal features (SGFs) (which include geothermal ecosystems) are to be avoided, and at the other end of the spectrum are Development Systems, which have few SGFs, and where some uses are prioritised and adverse effects are managed. This existing management approach is adaptive to the dynamic nature of geothermal systems and aims to integrate the rights and interests of iwi/Māori. It has been subject to considerable scrutiny, including extensive Environment Court processes.

Relying solely on the recommendations outlined in the rest of this report would deviate from and weaken existing management frameworks in the TVZ. For example, the consenting pathway created for the specific activities listed in NPSIB would risk the inappropriate use and development of Protected Systems and their associated geothermal ecosystems, and the effects management hierarchy is more stringent than what is currently required in the context of Development Systems.

Therefore, we consider a bespoke approach is required for geothermal ecosystem management in the scope of the NPSIB.

Concerns with option 3

The concerns with option 3 include it:

- is not sufficiently nuanced to reflect existing good management practices and individual ngāwhā
- is possibly too prescriptive and not sufficiently adaptive to geothermal system characteristics and possible uses, which may constrain management, innovation and local aspiration
- does not adequately provide for iwi/Māori rights and interests, including rangatiratanga
- is not consistent with the rest of the proposed NPSIB and good practice – it does not explicitly require the significance of geothermal ecosystems to be assessed using Appendix 1 of the proposed NPSIB
- does not explicitly capture other land use activities affecting geothermal ecosystems
- relies on the (continued) effectiveness of the TVZ geothermal system classification approach.

These concerns are addressed in the sections below.

Geothermal system classification

The intent of option 3 is to require the management of geothermal ecosystems in a way appropriate to existing geothermal system classifications, to balance protection and use and to

reflect existing management. Option 3 did not set a classification approach. We heard strong arguments this was best determined regionally. We agree with this, as geothermal systems are identified based on characteristics extending beyond indigenous biodiversity values. Therefore, we recommend retaining a direction that endorses regional geothermal system classification (which explicitly includes a consideration of indigenous biodiversity values). This is consistent with the classification approach applied in the TVZ.

Iwi/Māori rights and interests

Given iwi/Māori rights and interests in geothermal resources, we recommend the NPSIB specifically endorse tangata whenua involvement in the making or changing of policy statements and plans for the management of geothermal SNAs. We do not intend this to result in reclassifications of geothermal systems already classified. Rather, we consider this direction will apply where systems have not yet been classified and otherwise at the time of plan review.

We also recommend the inclusion of a clause providing for the development of Māori lands with geothermal SNAs in a way that enables tangata whenua to use and develop geothermal resources in a manner consistent with existing system classifications, or to reflect the vulnerability of the SNA in accordance with tikanga. This reflects existing plan provisions and acknowledges the historical and present constraints on Māori lands that make it more difficult to develop. The intent is to provide for iwi/Māori aspirations and the relationships iwi/Māori have with their ancestral lands and resources.

We acknowledge the Wai 2358 claim filed by the New Zealand Māori Council in 2012 in relation to Māori rights and interests in freshwater and geothermal resources. The Stage 2 report for Wai 2358[66] stated geothermal issues would be dealt with at a later stage of the inquiry.

Significance assessment

A submitter supported a variation on option 3 in which the significance of geothermal ecosystems would be assessed using the criteria of the proposed NPSIB. Existing practice in the TVZ is that geothermal ecosystems are identified as part of SGFs, using criteria established in an RPS. However, Forest and Bird considered this approach to significance was out of step with best practice. By contrast, Mercury Energy questioned the necessity of a separate assessment of indigenous biodiversity value using the SNA criteria in the proposed NPSIB, given the inclusion of biodiversity values in the SGF criteria. Mercury Energy expressed concerns about duplication and confusion for ecologists who must do two assessments.

We support the use of the NPS's significance criteria for determining SNAs, including geothermal SNAs. These criteria have been developed and refined through an extensive process and reflect best practice. Not using these criteria for assessing the significance of geothermal ecosystems would not support integrated and consistent management. We consider, with regards to biodiversity values, existing SGF criteria can be updated to give effect to the significance criteria in the proposed NPSIB, as there is already a high degree of similarity between the two. There is no intent to undermine the value of the SGF criteria. These are geothermal-specific and can complement the significance criteria in the NPSIB. We also recommend suitable ecological expertise be used to identify geothermal SNAs.

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[66] Waitangi Tribunal. 2019. *The Stage 2 report on the national freshwater and geothermal resources claims (Wai 2358)*. Wellington: Waitangi Tribunal.

We recognise the use of 'ecological districts' as the framework for significance assessments in the proposed NPSIB is problematic in the case of geothermal indigenous biodiversity. Geothermal ecosystems are determined by the subsurface characteristics of the geothermal systems (for example, their structure, temperature, water levels and chemistry). Therefore, we recommend, for the purposes of geothermal ecosystems in the TVZ, that the TVZ be considered the ecological district or land environment.

Prescriptiveness

Option 3 prescribed how adverse effects should be managed depending on the geothermal system classification. For geothermal ecosystems within Development Systems, adverse effects could be managed using the effects management hierarchy, except for the first step (avoid). By contrast, for geothermal ecosystems within Limited Development or Conditional Development systems, adverse effects could be managed using the full effects management hierarchy. The intent is to set a framework that integrates with the rest of the proposed NPSIB, reflects existing good practice through council plans, creates certainty and consistency around indigenous biodiversity management, and outlines minimum standards for the protection of significant indigenous biodiversity.

During consultation and post-consultation hui, we heard option 3 had not quite achieved these key principles, in part because it might have been too prescriptive. Therefore, unless it is appropriately nuanced to reflect existing good management practices and iwi/Māori aspirations and to become adaptable, it might unintentionally undermine regional good practice and outcomes (including for indigenous biodiversity).

We considered how to amend the detail around effects management to achieve the key principles. We concluded this would require increased prescription and complex provisions. It is particularly difficult to reflect iwi/Māori rights and interests and their strong preference for a regional approach to management in which they are empowered as kaitiaki and included in decision-making.

We suggest a less prescriptive approach may better meet the key principles and be more acceptable to iwi/Māori, as well as being more straightforward to implement. The approach we propose endorses existing good management practices and directs good outcomes for indigenous biodiversity, but limits prescription for effects management.

We recommend the NPSIB direct local authorities to protect geothermal SNAs and manage any adverse effects of subdivision, use and development on geothermal SNAs as appropriate for the existing system classifications in which those geothermal SNAs exist – or, if there is not already an existing system classification, by managing them in a way reflects the vulnerability of the geothermal SNA to use or development. This would mean setting objectives, policies and methods and would require local authorities to work with tangata whenua to determine a management approach. It would enable councils to determine their own effects management regimes specific to their regional and geothermal contexts. This approach is intended to empower tangata whenua as kaitiaki.

We recommend local authorities be directed to consider the adverse effects listed in the 'management of adverse effects' in the SNA provisions of the NPSIB when managing the adverse effects of subdivision, use and development on geothermal SNAs. Councils would also be directed to promote the protection and, where practicable, restoration and enhancement of geothermal SNAs. This supports the protection of geothermal ecosystems that are SNAs and integration with the rest of the NPSIB. It also supports the need for active management given the key threats to geothermal ecosystems include pest/weed incursions.

We propose local authorities also be specifically required to provide for the development of Māori lands in a way that enables tangata whenua to use and develop geothermal resources, in a manner consistent with the system classification and in accordance with tikanga. This endorses a local-level approach, providing for iwi/Māori rights and interests. Of note, the RMA does not control the use of geothermal water and heat when it is '… used in accordance with tikanga Māori for the communal benefit of the tangata whenua of the area and does not have an adverse effect on the environment'.

Our intent is the proposal as described provides the direction needed to future-proof the protection of geothermal ecosystems as geothermal SNAs across Aotearoa New Zealand. Given the dynamic nature of geothermal systems, the landscape of iwi/Māori rights and interests, and the investments in and adequacy of existing management frameworks, we consider this bespoke approach is appropriate for geothermal ecosystem management. However, this approach deviates from the effects management framework proposed for other SNAs in the proposed NPSIB, and there is a risk it will be harder to guarantee positive indigenous biodiversity outcomes. Therefore, effectiveness monitoring is critical to ensuring it adequately meets (and continues to meet) the objectives of the NPSIB.

Integration

The proposed policy and implementation requirement for geothermal ecosystems will sit under the NPSIB objectives. Other NPSIB provisions will apply to geothermal ecosystems, unless explicitly stated. We propose the NPSIB include an explicit statement that the general effects management regime for SNAs applies to geothermal SNAs to the extent practicable. We also propose a clause be included in the geothermal SNA implementation requirement, stating if there is a conflict between this clause and other provisions of the NPSIB, this clause will prevail.

Recommendations and decisions

Recommendations for managing adverse effects on geothermal ecosystems

19a) Amend the geographic application to ensure that geothermal ecosystems are in scope.

19b) Add a policy requiring the protection of geothermal SNAs as appropriate to the existing geothermal system classification or their vulnerability to development.

19c) Add an implementation requirement to Part 3 to manage the adverse effects on geothermal ecosystems. This new implementation requirement will:

- require local authorities (regional and territorial) to protect geothermal SNAs and manage the adverse effects of subdivision, use and development on these, as appropriate to the existing system classification
- where a geothermal system has not yet been classified, or where there is insufficient information to classify a system, require local authorities to manage the adverse effects of subdivision, use and development on geothermal SNAs in accordance with the vulnerability of those SNAs to development
- require local authorities to apply the effects management approach to other SNAs, to the extent practicable
- require local authorities to promote the protection and, where practicable, restoration and enhancement of geothermal SNAs
- require local authorities to provide for the development of Māori lands in ways that enable tangata whenua to use and develop geothermal resources in manners

consistent with the vulnerability of SNAs to development, or in line with any existing system classifications and in accordance with tikanga

- determine that, if there is a conflict between this clause and other provisions in the proposed NPSIB, this clause prevails, except for the provisions for managing the adverse effects of other activities affecting SNAs.

19d) Add to the definition of 'ecological district' that, in relation to geothermal ecosystems in the TVZ, the ecological district is the TVZ.

19e) Clarify that the provisions for managing the adverse effects on SNAs of new subdivision use and development do not apply, and geothermal SNAs are instead managed according to the geothermal SNA provisions.

19f) Add definitions for 'geothermal ecosystem', 'geothermal system' and 'geothermal SNAs'.

19g) Clarify that a suitably qualified ecologist must confirm that if an area qualifies as an SNA and comprises or contains a geothermal ecosystem, that SNA is a geothermal SNA.

Minister's decision

Agree

20 Biodiversity restoration priorities

Proposal consulted on

Along with protection, restoring natural areas is important for maintaining the indigenous biodiversity of Aotearoa New Zealand. Without these actions, some of our species and ecosystems are likely to disappear. Some of Aotearoa New Zealand's ecosystems are critically threatened. For example, wetlands have been reduced to around 10 per cent of their former extent. However, resourcing is limited, so a prioritisation of the available resources is needed to ensure our efforts are directed to the areas that need them most. Restoration actions will have the greatest benefits if they are focused on the most threatened areas or places where they will lead to the most significant improvements.

The proposed NPSIB required councils to promote, through their plans and policy statements, the restoration and enhancement of three priority areas: degraded SNAs; important connectivity and buffering areas; and wetlands and former wetlands. This provision suggested councils could provide incentives for restoration and enhancement on private land or could place restoration and enhancement conditions on appropriate resource consents to help achieve desired restoration outcomes. It also outlined examples of restoration and enhancement.

The intent of this provision is to provide clarity to councils on where to focus their efforts when promoting the restoration and enhancement of indigenous biodiversity. Some ecosystems need more attention than others. This provision enables priorities for restoration, both nationally and regionally, to be actioned by councils, putting resources where they are needed most.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were as follows.

- Protection provisions should be favoured over restoration provisions, as restoration provisions have become too regulatory. Restoring biodiversity is more expensive and riskier than protecting existing biodiversity and is a low priority for many councils.
- Priorities for restoration and enhancement should include threatened and rare ecosystems. The current drafting would not lead to the restoration of the full range of ecosystems; regional priorities are not currently reflected.
- Terms such as 'degraded SNAs' and 'former wetlands' are unclear, and more clarity is needed.
- Wetlands policies are confusing as currently drafted, and there is potential for conflict with the wetlands policies in the NPS-FM unless they are well aligned.

Analysis

Restoration is a key component of the proposed NPSIB and its goal to maintain indigenous biodiversity. Therefore, the provision requiring the identification of priority areas for restoration should remain with the NPSIB to give clear guidance to councils on areas to target for restoration. We recommend several small changes to reflect the feedback received, but the intent largely remains the same.

Protection provisions to be favoured over restoration provisions

Several submitters (particularly councils) wanted protection provisions to be prioritised over restoration provisions. We recommend paring back the requirements in this part of the proposed NPSIB. The initial intention of the BCG in its draft NPSIB was to promote restoration and enhancement through RBSs and other non-regulatory methods. This intent has remained largely unchanged, but drafting in the proposed NPSIB may not have represented it to an appropriate level.

We suggest several small changes to better reflect this intent. Protection measures should be the first focus of those implementing the NPSIB, but restoration plays an important supporting role. As pointed out by several submitters, implementing the protection provisions well would see an improvement in how biodiversity is managed in Aotearoa New Zealand.

Changes are needed to soften the language and subsequent regulatory requirements. Some clauses were seen as excessive. We agree restoration provisions could be simplified and condensed. Although a regulatory 'core' should remain, several provisions will become discretionary and will not need to be implemented by all councils. These provisions will act as signposts for those councils going beyond the core restoration requirements.

We feel it is necessary to retain the restoration provisions, but in a more discretionary form. This will help to signal the importance of the restoration provisions and acknowledge councils have different priorities and abilities to implement the requirements. Those councils interested in doing more restoration will still have direction on the right actions to take. Councils with fewer resources or different priorities will be able to focus more strongly on protection measures. Retaining restoration provisions will help to signal a long-term commitment to restoration and link the NPSIB to the ANZBS.[67] One of the three pillars of the ANZBS is to ensure we protect and restore biodiversity from mountain tops to ocean depths. Most submitters agreed restoration is needed to some degree, so it is important it is not lost altogether.

Changes to priorities for restoration and enhancement

Several submitters pointed out the proposed NPSIB priorities for restoration and enhancement did not include threatened and rare ecosystems. We agree this is an important, and currently overlooked, aspect of restoration and enhancement. Threatened and rare ecosystems were identified as a national priority for indigenous biodiversity protection in the 2007 *Protecting Our Places* report,[68] and they are a logical and necessary part of the prioritisation for restoration and enhancement.

Several regional councils are already prioritising their restoration work on threatened and rare ecosystems. These include ecosystems reduced to 10 or 20 per cent of their previous extents and those that are naturally rare.

Including threatened and rare ecosystems as restoration priorities in the proposed NPSIB would support best practice by local government and makes ecological sense. It would also ensure areas most in need of restoration receive it. Additionally, it would discourage the 'window dressing' approach, where only the cheapest and easiest areas are chosen for

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[67] Department of Conservation. 2020. *Te Mana O Te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020*. Wellington: Department of Conservation.

[68] Ministry for the Environment, Department of Conservation. 2007. *Protecting our Places: Information about the Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land*. Wellington: Ministry for the Environment.

restoration. Including threatened and rare ecosystems helps to ensure the full range of natural ecosystems in Aotearoa New Zealand is retained and able to be enjoyed by future generations. To ensure other existing regional priorities for restoration are not excluded, we recommend including language that captures regional priorities as a restoration priority.

We also recommend that indigenous biodiversity on Māori lands be an additional category for prioritisation, where this is sought by the owners. This reflects the intent of the requirement for local authorities to consider providing incentives for restoration in priorities areas, including those on Māori lands, and ensures consistency between the two subclauses. It is also consistent with the approach for Māori lands that appropriate approaches should support a partnership approach.

Improve clarity of language

Submitters expressed concern about the use of terms such as 'former wetlands', 'degraded SNAs' and 'buffering areas' in the priorities for restoration. These were described as vague terms that could easily be misinterpreted. We agree these are broad concepts open to a range of interpretations. As the NPSIB intends to reduce the potential for litigation, greater clarity in these terms is needed to reduce litigation risk.

We agree with some of the suggestions for these terms and how they should be described in the NPSIB. Although we consider that degraded SNAs (that is, those with reduced ecological integrity) should remain as a core aspect, a better link could be made with ecological integrity, using this definition to clarify what truly counts as a degraded SNA.

We also recommend removing the term 'former wetlands', as this is already captured by the existing priority for 'wetlands'.

After seeking ecological advice on buffering areas, we consider the existing definitions for both buffering and connectivity could be adjusted for greater clarity on what a 'buffering area' truly includes.

Wetlands as restoration priority

The regulation of wetlands has traditionally been patchy, partly because their makeup of freshwater, estuarine and terrestrial aspects does not sit well with the 'environmental domains' approach envisaged by the RMA.

Wetlands have repeatedly fallen through the 'regulatory cracks' in the system. During the development of the 2020 freshwater reforms, it was decided the identification, protection and management of wetlands should be driven through the NPS-FM, while the restoration of wetlands should be promoted through the NPSIB. Wetlands often have a large terrestrial vegetation component that in turn is home to indigenous fauna. It is critical to promote the restoration of these terrestrial aspects through the NPSIB. Although this separation is somewhat awkward, wetlands need to be retained as a priority in the NPSIB to prevent their restoration falling into a gap in respective policies.

Submitters provided contrasting views on this, with some strongly supporting including wetlands as a restoration priority and others strongly opposing it. Most concerns from submitters centred on the potential for confusion or conflict between the two NPSs, particularly in relation to different definitions of wetlands. The proposed NPSIB used the RMA definition of a 'wetland' and the NPS-FM has a new definition for 'natural inland wetlands'. To

ensure there is better alignment, we recommend the definition of ‘natural inland wetland’ is used in the NPSIB.

Recommendations and decisions

Recommendations for restoration and enhancement priorities

20a) Make the language more discretionary, so councils are enabled rather than required to promote restoration and enhancement.

20b) Include threatened and rare ecosystems and existing regional priorities as priorities for restoration.

20c) Retain ‘degraded SNAs’, remove ‘former wetlands’, and clarify ‘buffering areas’ through a minor change to its definition, as restoration and enhancement priorities.

20d) Retain wetlands as a restoration and enhancement priority in the NPSIB and use the NPS-FM definition of ‘natural inland wetland’.

20e) Add a category to the list for prioritisation to describe indigenous biodiversity on Māori lands where this is advanced by the owners.

Minister’s decision

Agree

21 Increasing indigenous vegetation cover

Proposal consulted on

Indigenous biodiversity is often depleted in areas with low indigenous vegetation cover. Increasing the amount of vegetation cover is an essential part of maintaining indigenous biodiversity. In Aotearoa New Zealand, indigenous vegetation cover is particularly depleted in urban environments and lowlands. Ecological research suggests when ecosystems are reduced to less than 10 per cent of their original extent, their persistence in the landscape is threatened. In some areas the loss of ecosystems and vegetation cover is so great reconstruction of those ecosystems is needed.

The proposed NPSIB required regional councils to assess the percentage of indigenous vegetation cover in the rural and urban areas of their regions. If there were less than 10 per cent remaining, the councils were required to set targets for increasing vegetation cover in both urban and rural areas. If areas already had at least 10 per cent indigenous vegetation cover, councils could include targets for increasing this. Methods to achieve these targets were not prescribed and were intended to be promoted through non-regulatory means, including RBSs.

The intent of this provision is to support the restoration of those environments that have suffered a large loss of indigenous vegetation cover or are typically underrepresented in our protection systems (for example, lowland environments). The provision also encourages the regeneration of indigenous vegetation in urban areas to support residents' health and wellbeing, and to provide environmental benefits such as climate change mitigation.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were consistent with those received on the restoration and enhancement provisions and included:

- protection provisions should take priority over restoration, as restoring biodiversity is more costly and risky
- the NPSIB should focus on threatened and rare ecosystems for restoration, with suggestions the target should be higher – that is, 20 or even 30 per cent rather than 10 per cent
- additional clarity is needed on terms in the indigenous vegetation cover targets, such as 'peri-urban', 'urban' and 'rural', and additional detail is required on how to quantify indigenous vegetation cover and the scale at which targets are operating.

Analysis

Increasing indigenous vegetation cover remains important for maintaining indigenous biodiversity. Therefore, we consider the provision requiring councils to assess indigenous vegetation cover in their regions should be retained in the NPSIB, along with aspects of requiring increases in indigenous vegetation cover. Submitters had varying views on the strength and regulatory requirements of the provision, but opposition to the provision overall was rare, suggesting no major changes are needed. Making some small changes will ensure the wording of the provision reflects its intent.

Protection provisions to be favoured over restoration provisions

As with the requirements for outlining restoration priorities, several submitters called for a softening of the requirement to increase indigenous vegetation cover, pointing out protecting existing indigenous biodiversity is cheaper and less risky than restoring or reconstructing it. We agree, but also acknowledge the restoration or recreation of habitats cannot be overlooked if indigenous biodiversity is to be maintained. Encouraging and promoting indigenous biodiversity cover is still important, particularly in urban areas and those ecosystems that have suffered the most loss. We recommend several small changes to better reflect this intent.

We recommend softening some of the language used in the provisions to allow councils to implement the more regulatory 'protection' provisions of the NPSIB first. Submitters suggested this better aligned with the effects-based management focus of the RMA. Increasing the indigenous vegetation cover requirements will be less regulatory in nature but will continue to be built around a regulatory 'core', in a similar way to the restoration priorities provisions. Promoting an increase in indigenous vegetation cover through largely non-regulatory methods aligns with the original BCG intent and still accounts for councils doing restoration and reconstruction actions, but to a level with which they are comfortable.

We recommend the mandatory requirement for regional councils to assess the indigenous vegetation cover in their regions be retained. We recommend this is undertaken in collaboration with territorial authorities, and with tangata whenua (to the extent they wish to be involved). This latter will ensure consistency with the recommended partnership approach for the NPSIB.

The assessment Will help to improve the national understanding of existing indigenous vegetation in regions. We consider the requirements for regional councils to set targets to increase indigenous vegetation cover to at least 10 per cent in both urban and rural areas and to include objectives, policies and methods for increasing vegetation cover should also be mandatory. Councils will be able to decide if they wish to set targets higher than 10 per cent for those areas where there is already more than 10 per cent indigenous vegetation cover.

We consider it is necessary to retain aspects of these provisions, albeit in a non-regulatory form, to ensure national-level guidance on restoration and reconstruction is in place. Those councils with appetites and resourcing to implement the provisions fully will be able to do so. Councils with smaller resource bases will be encouraged to do as much as they can, while meeting a regulatory bottom line that still improves the current biodiversity management system.

Change the focus of indigenous vegetation cover targets

This provision broadly supports an increase in indigenous vegetation cover and puts the focus on priority areas. Some submitters suggested the provision should focus solely on threatened and rare ecosystems, as these are most in need of re-creation and restoration. We agree promoting the restoration of threatened and rare ecosystems is important and consequently recommend including it as an additional priority for restoration. This means it will be carried through to the vegetation cover priorities.

A few submitters wanted the provisions to go further than they currently do, suggesting the indigenous vegetation cover targets should be 15, 20 or even 30 per cent of regions. We agree this would be a worthwhile goal if it could be achieved. However, it is inconsistent with reports of resourcing and prioritisation issues for restoration and reconstruction work. Targets set at

these levels would likely be unachievable in some areas. For example, in Christchurch city only an estimated 1 per cent of the indigenous biodiversity cover currently remains. Therefore, we recommend indigenous vegetation cover targets remain at 10 per cent, but flexibility be retained so councils and communities may set more ambitious goals if they wish.

Improve clarity of indigenous vegetation cover targets

Submitters identified several terms as needing clarification. Terms such as 'urban', 'peri-urban' and 'rural' were said to require definitions, and more detail was requested on the scale at which the provisions apply (for example, district, region or city). The proposed NPSIB allowed these terms to be further defined by regional councils. However, the councils themselves requested definitions be provided, as this would ensure consistency between regions and appropriate implementation by councils.

To simplify the provision, we suggest there be only two relevant areas of indigenous cover calculation: urban environments and non-urban environments. The finalised NPS-UD includes a definition of 'urban environment' we recommend be used in the NPSIB. This would provide for consistency in national direction tools and use a term councils are already familiar with. 'Non-urban environments' will be the opposite of this and will include all non- urban environments. We also recommend clarifying the wording to better reflect the intent of the provision – that is, all urban environments in each region, and the non-urban environments surrounding them, should aim to have 10 per cent indigenous vegetation cover.

Recommendations and decisions

Recommendations for increasing indigenous vegetation cover

21a) Soften the language in some parts of this clause to better reflect the intent that restoration and reconstruction should be promoted after protection provisions have been prioritised.

21b) Clarify that the baseline assessment is completed by regional councils working with territorial authorities, and with tangata whenua (to the extent they wish to be involved).

21c) Clarify the implementation of provisions through use of the terms 'urban environment' and 'non-urban environment'.

21d) Ensure that both urban environments and non-urban environments are promoted to have at least 10 per cent indigenous vegetation cover in each region, with the potential for councils to go further if desired.

21e) Retain the priorities for increasing indigenous vegetation cover, including those areas identified in the restoration priorities provisions.

Minister's decision

Agree

22 Regional biodiversity strategies

Proposal consulted on

Under the proposed NPSIB, the development of RBSs was required to begin within three years of the gazettal of the NPSIB, then finalised within six years. If a regional council already had a strategy, it would need to amend it to align it with the NPSIB. The proposed NPSIB set out the required and suggested content of an RBS. Regional councils would create (or amend) these strategies collaboratively with important stakeholders, tangata whenua, territorial authorities and community groups.

The intent of these provisions is to require each regional council to create a community-driven, strategic document to help mobilise the region behind a shared set of priorities for protecting, restoring and enhancing biodiversity. These strategies are intended to be landscape-scale restoration and enhancement visions for the regions' biodiversity and to give regional expression to the ANZBS.[69] The creation of RBSs is mandatory, but the contents are flexible to allow for individual regional priorities.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were:

- the creation of regional strategies should be through the ANZBS to allow for more flexibility in the content, and the content requirements should be pared back to also provide more flexibility
- a greater emphasis is needed on collaboration when creating RBSs and for strategies to go further in promoting other restoration activities beyond just terrestrial biodiversity
- the timeframes for completing or updating RBSs should be amended.

Analysis

The requirement for regional councils to create RBSs is an important part of the proposed NPSIB. Strategies are key to the restoration aspect of maintaining indigenous biodiversity, as they create non-regulatory levers to guide action and improve biodiversity outcomes in a more responsive way than regulation alone. We believe requiring regional councils to create RBSs is an important pillar of the NPSIB and should remain, albeit with amendments to better reflect the intent, provide for flexibility in content and clarify obligations.

Increase flexibility of content

Several submitters, particularly from the Taranaki region, suggested RBSs be promoted by the ANZBS, rather than being required through the NPSIB. This option has previously been analysed by officials, following discussions with councils, who reached the conclusion that promoting regional strategies under the ANZBS would be unlikely to produce the desired results of uptake by councils. The ANZBS has been approved by Cabinet, so there is no longer an opportunity to change the outcomes it seeks. Therefore, we believe a statutory

[69] Department of Conservation. 2020. *Te Mana O Te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020*. Wellington: Department of Conservation.

requirement through the NPSIB is the preferred outcome, as it will increase the use of this tool and result in better biodiversity outcomes for Aotearoa New Zealand.

Submitters who wanted strategies to be promoted by the ANZBS believed this would lead to greater flexibility in content and enable better alignment with regional priorities. Other submitters made more general calls to reduce the predetermined requirements for RBSs for a similar reason. Several councils expressed concern about the duplicative nature of some of the components, such as mapping identified SNAs and taonga. This is already required elsewhere in the proposed NPSIB.

We agree there is a lot of pre-determined content and suggest making some changes could enable regional priorities to be met without reducing overall biodiversity outcomes or national consistency in strategies. Therefore, we recommend reducing the pre-determined content, for example by removing aspects which require records to be made of all areas identified for restoration and all actions being taken to assist in restoration. Some matters could also be deleted, either because they are covered elsewhere or because they are more suitable for use as guidance material to provide examples of comprehensive strategies – for example, the requirement to spatially identify all SNAs and taonga.

Improved collaborative input and promotion of other biodiversity outcomes

RBSs provide opportunities to promote environmental outcomes beyond terrestrial biodiversity. They can include measures of environmental outcomes such as climate change mitigation, biosecurity enhancement and management (with links to regional pest management plans) and amenity and freshwater outcomes where these measures also contribute to the protection, restoration and enhancement of indigenous biodiversity. There was strong support among submitters for ensuring this remains possible. Submitters were particularly supportive of biosecurity and pest-control measures being supported by RBSs, as these are often strongly linked with improving biodiversity outcomes. RBSs represent an opportunity to address these aspects without needing to expand the overall scope of the NPSIB.

We suggest measures promoting other environmental outcomes continue to be encouraged and linked with achieving the restoration and enhancement of indigenous biodiversity. In doing so, biodiversity outcomes will be improved, fragmentation in environmental management will be reduced and considerations of the environment as a holistic whole reflecting te ao Māori will be increased. RBSs will be critical tools for aligning indigenous biodiversity restoration and enhancement with other national priorities, such as Predator Free 2050 and the ANZBS.

Another similar and strong theme that arose from the submissions was the importance of RBSs as collaborative documents created by communities rather than solely by councils. There were numerous first-hand accounts from submitters about the importance and effectiveness of community input for the quality of the final documents. Community involvement is also key for improving on-the-ground implementation and continued buy-in beyond the completion of the regional strategy. Therefore, we suggest promoting and encouraging this further.

We recommend improving other biodiversity outcomes and promoting collaborative creation are retained as key aspects of RBSs. Major changes in intent are not needed, but drafting amendments can ensure that these aspects are more actively and clearly promoted as key aspects of developing RBSs.

Timeframes

Some submitters suggested changes to the timeframes for creating/updating RBSs, with both shorter and longer timeframes proposed. Several councils wished to see a 10-year timeframe. Considering recent events, including the COVID-19 pandemic and other new national direction councils are implementing, we support the suggestion to extend the finalisation timeframes. However, we recommend the requirement to initiate work on strategies be retained at three years. Many of the councils that have not already created RBSs have cited a lack of resources as the reason, so shorter timeframes would likely be untenable for councils.

Extending timeframes has the potential to delay biodiversity outcomes by years but does not prevent councils and communities completing a strategy earlier. Rather, it provides requested support to councils, which will be the main implementers of the NPSIB. It will have only small effects on the roughly two-thirds of councils that already have strategies and will have large beneficial effects for those that do not. Additional time will also enable additional implementation guidance to be created, community buy-in to increase and more comprehensive and well-founded strategies to be developed.

Recommendations and decisions

Recommendations for regional biodiversity strategies

22a) Retain RBSs as a requirement of the NPSIB, but reduce the pre-determined content required.

22b) Retain and strengthen the importance of RBSs as collaboratively created documents that can support and promote other biodiversity outcomes.

22c) Extend the timeframes for the update and completion of RBSs to 10 years but retain the initiation timeframe of 3 years.

Minister's decision:

Agree

Monitoring and implementation

23 Monitoring and assessment of indigenous biodiversity

Proposal consulted on

The proposed NPSIB requires regional-council-led monitoring according to plans must be developed with others to monitor the maintenance of indigenous biodiversity in their regions. This provision requires councils to consider mātauranga Māori and tikanga Māori monitoring methods where local tangata whenua agree.

Regional councils are also required to include methods and timeframes:

- for monitoring progress against the objectives of the NPSIB
- that are best practice, or nationally agreed, to allow for comparability.

The proposed NPSIB encourages regional councils to focus monitoring on the ecological integrity and physical extent of SNAs, taonga outside SNAs and other indigenous biodiversity outside SNAs. Tools such as action plans must be developed if monitoring indicates the objectives of the NPSIB will not be met.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were as follows.

- The resourcing of councils is inadequate, and the cost of implementation will be extensive.
- There is a need for a nationally agreed monitoring methodology or set of indicators.
- The use of mātauranga Māori as a monitoring method is complicated.

Analysis

Nationally agreed monitoring methodology

A common theme for a range of submitters was a desire for a nationally agreed monitoring methodology to allow comparisons between datasets and save resources. Most regional councils recommended having a central government–led, nationally agreed monitoring framework.

Local authorities have a responsibility for monitoring various elements of our indigenous biodiversity and are responsible for the State of the Environment monitoring. Regional councils are responsible for considering the effects of activities on biodiversity, particularly in water and coastal marine areas. Territorial authorities have a responsibility for the effects of land use activities on biodiversity.

Although regional councils may have formally adopted (but not yet implemented) the set of 18 indicators in the Terrestrial Biodiversity Monitoring Framework, evidence suggests these may

be used in a variety of ways depending on resources and local preferences. However, a lack of consistency in monitoring has resulted in a patchy evidence base.

A key driver for the development of the monitoring policy is the need to have an in-depth and consistent, nationally agreed monitoring system as part of the NPSIB. This would enable decision-makers to measure if the NPSIB is enabling us to better protect and enhance our indigenous biodiversity across the country. It would also enable us to know when we are achieving success and where we need improvement.

We recommend the development of a nationally agreed monitoring methodology. This should include an outcome-monitoring framework to select relevant indicators and measures, standard methods for data collection (or a process for alternative methods) and field protocols used by agencies. It should be established using a structured and coordinated process led by central government.

Central government would be required to work with agencies that have existing datasets (for example, Toitū te Whenua | Land Information New Zealand, DOC and the Ministry for the Environment) and set up a process for establishing a framework with input from local authorities and other agencies (such as Manaaki Whenua | Landcare Research) to ensure the methods are fit for purpose and agreed centrally.

Resourcing and implementation costs

The significant costs and resources required for a monitoring programme were raised as an issue by submitters, who were concerned the programme would be highly expensive and a burden for councils. They recommended national monitoring be funded by taxpayers, not rate payers.

As outlined above, a nationally agreed monitoring method is supported by councils, landowners and iwi. This would reduce the overall costs and resources for councils to do monitoring. However, there will still be significant monitoring costs, even under a nationally agreed methodology.

All councils are charged with the compliance, monitoring and enforcement role set out in the RMA, which requires specific skills and expertise. Currently, the requirement to monitor resource consent applications and permitted activities outlined in plans represents a significant workload. Many councils struggle to keep up with it. As such, further funding and support are required to implement the proposed NPSIB effectively. We recommend a suite of tools, including funding, be developed to further resource compliance, monitoring and enforcement at councils with large areas of indigenous biodiversity, in addition to ongoing training and support for those councils. Guidance will also be imperative to ensure the monitoring provisions can be implemented effectively.

Mātauranga Māori

There was general support across all submitter categories for including mātauranga Māori in the monitoring requirements. However, submitters questioned how mātauranga Māori could be measured. They also raised concerns around the variability in monitoring using mātauranga Māori across regions, as perspectives differ between iwi which would make it difficult to establish nationally agreed standards for the mātauranga Māori component of monitoring. The implementation of this policy requires meaningful collaboration and consultation with Māori. However, we consider the inclusion of this approach is essential to enabling a holistic and

integrated approach to monitoring alongside Western science approaches. It will be left to councils to work with iwi and the community to enable this approach.

We acknowledge the submitters who are concerned about this approach. However, we believe it is necessary for the sustainable management and maintenance of indigenous biodiversity. To address this concern, we recommend a suite of implementation support be provided, including guidance on how to partner with iwi and build cultural capacity in councils, with a specific focus on mātauranga Māori.

Groups regional councils must work with

Submitters also raised concerns regarding the way that tangata whenua are referenced in this clause as one of the groups with which regional councils must work to develop monitoring plans. As such we recommend a change so that tangata whenua are referenced first.

One submitter suggested that private landowners and communities should also be referenced. To acknowledge other relevant stakeholders with which regional councils may need to work, without limiting this or providing an exhaustive list, we recommend a minor change to include references to other relevant stakeholders.

Recommendations and decisions

Recommendations for monitoring and assessing indigenous biodiversity

23a) Amend the wording so that tangata whenua are referenced before other groups with which regional councils must work, and add references to other relevant stakeholders.

23b) Retain the mātauranga Māori subclause.

Minister's decision

Agree

24 Information requirements regarding assessments of environmental effects on indigenous biodiversity

Proposal consulted on

Schedule 4 of the RMA outlines the information required in applications for resource consents, and a clause relating to the AEEs of the proposed NPSIB builds on specific aspects of the schedule by detailing the information requirements as part of resource consent applications for projects with more than minor adverse effects on indigenous biodiversity.

The clause also supports the appropriate implementation of the effects management hierarchy by requiring sufficient information to demonstrate the hierarchy has been followed.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were as follows.

- The requirements are too broad and onerous, and they will be costly to implement for councils and those who need to apply for resource consents.
- There is not enough ecological expertise in Aotearoa New Zealand to implement the requirements.
- Information regarding mātauranga Māori and identified taonga needs to be provided by people with the appropriate expertise.
- A scale needs to be added to ensure this clause does not apply to every resource consent.
- AEEs are already required by the RMA, so specific information requirements are not needed and should be removed from the proposed NPSIB.
- Implementing these provisions may lead to an immediate improvement in biodiversity outcomes, and councils would be able to make more informed decisions.

Analysis

Provisions will improve biodiversity outcomes

A small majority of submitters agreed the information requirements provision should be included in the proposed NPSIB. Many submitters stated using this tool would enable immediate improvements in biodiversity outcomes and more informed decisions upholding the requirements of the RMA. Other submitters stated minimum requirements would improve biodiversity monitoring and information held by councils in their areas, especially before district-wide SNA assessments could be done.

This clause builds on aspects of Schedule 4 of the RMA by detailing the information required when there are impacts on biodiversity. This will ensure councils can consider impacts on biodiversity appropriately as part of resource consent applications.

Other submitters argued more considerations should be included in AEEs, such as demonstrations of how activities or applications have worked through the requirements of the effects management hierarchy policy under clauses 3.9 and 3.13.

Given the intent of the provision is to achieve better decision-making on indigenous biodiversity, we believe it is important the provision and its intent are retained. As mentioned by submitters, many current AAEs are inadequate, so retaining the provision will strengthen the proposed NPSIB policies.

Provisions too onerous and expensive

Many submitters stated the provisions in this clause were too onerous and would be expensive to implement.

Concerns were also raised about the broad language used in drafting, which could potentially lead to far-reaching assessments. Submitters stated the costs of the requirements would be disproportionate to the effects on indigenous biodiversity.

Submitters questioned whether this clause applied to activities where sites might not have biodiversity values, or if it only applied where either:

- all or part of a site was in or affected a listed SNA, but the activity was not in or did not affect that biodiversity area
- it captured all activities where all or any of the site was in or affected one of the biodiversity areas.

The clause is not intended to add onerous information requirements where activities are unrelated to, but happen to be on the same sites as, areas of vegetation listed above. As such, we consider it necessary to ensure proposals result in improved AEEs to help improve biodiversity outcomes but the costs of achieving this are not prohibitively expensive.

We recommend adding the scope is to be limited to resource consent applications for activities with more than minor adverse effects on indigenous biodiversity.

Detail to correspond to scale of activity and include description of existing features

Many submitters stated AEEs could become too expensive under the new proposals. Some submitters also believed implementing the provisions would negatively affect particular land uses, namely farming and forestry, as the AEEs required for these large-scale land uses would be expensive.

We consider it necessary to ensure this provision results in improved AEEs that help to achieve better biodiversity outcomes, but also ensures the associated costs are not prohibitively high. The information must also be specified in sufficient detail to satisfy its purpose and include items such as correspondence with information on the scale and significance of the effects the activity may have on the environment. The BCG had these thresholds, and they are considered necessary in ensuring a balance between providing councils with the information required and providing councils with the discretion to consider what is appropriate as required by section 88 of the RMA.

To address this, we recommend a provision be added to the effect that the details included are to be commensurate with the scale and significance of the effects an activity may have on the environment.

We received advice from professionals with ecological expertise that reports should also include descriptions of the existing ecological features and values of sites, as this is a standard

and fundamental step in the process undertaken by ecologists. We agree that this is appropriate and have recommended an additional subclause to provide for it.

Lack of expertise in carrying out AEEs

A few submitters raised concerns about the availability of the experts and resources needed to meet the information requirements of the AEE provisions. Concerns were raised there are not enough highly skilled ecologists available in Aotearoa New Zealand to complete the work required by both applicants and councils. Concerns were also raised that the pressure for skilled ecologists would be increased if a full ecological assessment were required every time a resource consent was needed for an activity in an area with indigenous vegetation. As stated above, we recommend limiting the scope to resource consent applications for activities with more than minor adverse effects on indigenous biodiversity.

In addition, submitters highlighted ecologists may not have the relevant expertise, or it may not be appropriate for ecologists to make assessments of identified taonga and consider incorporating mātauranga Māori. We agree this information needs to come from those with appropriate cultural expertise and recommend a change so the preparation of reports is not required by suitably qualified ecologists alone and should incorporate relevant expertise as appropriate.

Recommendations and decisions

Recommendations for assessing environmental effects on indigenous biodiversity

24a) Amend to clarify that assessments and relevant information must be provided for resource consent applications for activities with more than minor adverse effects on indigenous biodiversity.

24b) Add a clause like that included in the BCG's draft NPSIB, stating that detail provided should be commensurate with the scale and significance of the effects the activity may have on the environment.

24c) Add references to other relevant expertise alongside that of a suitably qualified ecologist, to ensure that the provision of advice on identified taonga and mātauranga Māori comes from appropriate sources.

24d) Add a subclause to specify that reports should contain descriptions of the existing ecological features and values of sites.

Minister's decision

Agree

25 Integrated management of indigenous biodiversity

Proposal consulted on

The proposed NPSIB requires councils to manage indigenous biodiversity and the effects on it of subdivision, use and development in an integrated way.

The proposed NPSIB requires councils to recognise interactions between terrestrial, freshwater and coastal marine environments. They must also provide for the coordinated management and control of subdivision, use and development as they affect indigenous biodiversity across boundaries. They must consider the requirements of strategies and other planning tools required or provided for in legislation and relevant to indigenous biodiversity.

Key issues from submissions

The key issues identified through submissions and subsequent analysis were as follows.

- More clarity is needed on what integrated management requires of local authorities.
- Roles in the proposed NPSIB need to be clearly defined.
- Integration is needed between different types of environments.
- Integration is needed across national direction tools.

Analysis

More clarity in what integrated management requires of local authorities

Only a small number of submitters said clause 3.4 in the proposed NPSIB provided enough clarity on the requirements of integrated management. A couple of submitters suggested the provision was not sufficiently prescriptive, and best practice guidance would benefit local authorities in their interpretation of this policy as drafted.

Policy 5 of the proposed NPSIB states the intention for integrated management of biodiversity. Clause 3.4 specifies where integrated management can be best provided for – that is, through interactions between different environments, coordinated management across administrative boundaries, and considerations of other strategies and planning tools.

We consider it would be inappropriate for the NPSIB to require councils to adopt institutional arrangements to achieve integrated management. Rather, we believe it would be more effective to have a policy broadly requiring three key concepts to be used to achieve integrated management – as outlined in the subclauses.

We support submitters' view that best practice guidance would be most beneficial to local authorities in interpreting this policy and achieving the goals of the subclauses.

Clearly defined roles

A few submitters stated this provision does not provide enough clarity on which local authority is responsible or who has jurisdiction over other domains to achieve the goal of integrated management.

The policy as currently drafted requires local authorities (that is, regional and territorial authorities) to take an integrated approach. The functions conferred on councils under sections 30 and 31 of the RMA give both regional and territorial authorities responsibility for biodiversity. Thus, we believe it is appropriate to require both regional councils and territorial authorities to be responsible for integrated management.

The goal of integrated management is also achieved implicitly through other policies in the proposed NPSIB. For example, SNA identification requires an area to be assessed in a way unaffected by artificial margins, such as property boundaries and jurisdictional boundaries. Therefore, councils would need to work together should an SNA cross a jurisdictional boundary. The proposed NPSIB assigns responsibility to both regional and territorial authorities through its various policies. We believe it is appropriate for these more specific policies to clearly define specific roles to achieve integrated management, and for the integrated management policy to apply to both regional and territorial authorities as an overall management approach.

Integration of different types of environments

The NPSIB requires local authorities to recognise the interactions between the terrestrial environment, freshwater environment and coastal marine area. Several submitters stressed the importance of an integrated approach for more consistent links between the terrestrial, freshwater and coastal environments, but also highlighted the difficulty in achieving this. Achieving integration across the three domains could represent a considerable task for territorial authorities.

We believe this policy could be supported by best practice guidance to assist both territorial authorities and regional councils in achieving integrated management. We also believe the alignment of integrated management policies in the various pieces of national direction for each of the domains mentioned is important for supporting the implementation of the policy. The NZCPS[70] and NPS-FM both contain integrated management policies; this creates a policy connection across the national direction covering the three domains.

We received feedback that 'ki uta ki tai' is more appropriate for freshwater, flowing from the mountains to the sea, than indigenous biodiversity. We agree that this clause could be amended to clarify what it intends in terms of interconnectedness and recommend a change to refer to the interconnectedness of the whole environment and the interactions between the terrestrial environment, freshwater and the coastal marine area.

Integration across national direction tools

National direction tools should, as far as possible, anticipate and manage any conflicts. Several RMA national direction tools (proposed and existing) are expected to interact with the NPSIB.

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[70] Department of Conservation. 2010. *New Zealand Coastal Policy Statement*. Wellington: Department of Conservation.

Officials recognise any areas of tension between these tools and the NPSIB will need to be managed appropriately.

Several submitters sought clarification on how to implement the NPSIB in conjunction with other strategies and planning tools, and whether 'considering' the requirements of these provides clear enough direction. We agree that this subclause could be strengthened and recommend changes to that will direct work on integrated management towards achieving mutually beneficial outcomes through the alignment of strategies and planning tools relating to the management of indigenous biodiversity.

Recommendations and decisions

Recommendations for the integrated management of indigenous biodiversity

25a) Amend wording to clarify that local authorities must recognise the 'interconnectedness' of the environment, removing references to ki uta ki tai.

25b) Strengthen the direction of relevant strategies and planning tools, from 'considering' to 'working towards aligning'.

Minister's decision

Agree

26 Possible regional exemptions

Context

Several councils in Aotearoa New Zealand will face potential challenges in implementing the proposed NPSIB because they have large areas of PCL, a high proportion of remaining indigenous biodiversity, a low rating base and/or large or remote land areas. Examples include the West Coast councils, Southland District Council and Gisborne District Council. Some councils with these features have called for special considerations for their regions, ranging from targeted implementation support or specific changes to the proposed NPSIB to complete exemption from the NPSIB. This section outlines our recommendations if exemptions should be provided for councils with these specific challenges.

Analysis

National consistency needed

National direction tools, such as NPSs, support local decision-making under the RMA and give clarity to local authorities on how to manage specific resources. They are used when a consistent response is needed across Aotearoa New Zealand to an issue of national importance. Special considerations for certain councils, or exemptions from NPSIB requirements, could conflict with this purpose.

The Regulatory Impact Statement for the proposed NPSIB[71] identified an inconsistent management of biodiversity as one of the reasons for needing national direction. The proposed NPSIB aims to introduce a step-change to bring all councils up to best practice and to provide for consistency. The NPSIB will be a national-level policy that needs to be implemented around the country to help reverse the decline in indigenous biodiversity. Carve-outs for certain councils would: set precedents for others to request carve-outs; lead to poorer biodiversity outcomes; and diminish the consistency of biodiversity management around the country.

Critically, all regions of Aotearoa New Zealand are continuing to lose biodiversity, no matter the state of the remaining existing biodiversity. Even if this loss is small or subtle, a consistent, cumulative decline is a pervasive threat to biodiversity nationwide. The loss of biodiversity must be addressed.

It should be acknowledged councils in Aotearoa New Zealand have different priorities and each council is at its own stage on the 'biodiversity-management journey'. Councils' funding for biodiversity programmes, policies and monitoring differs dramatically between regions and districts. Some councils are focused on protecting remaining indigenous biodiversity, and others are focused on restoring lost environments. We believe the proposed NPSIB provides enough flexibility for councils to implement it effectively and consistently, no matter what the stages of their 'journeys', while providing for local contexts.

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[71] Department of Conservation, Ministry for the Environment. 2019. *Impact Statement: Improving indigenous biodiversity management under the Resource Management Act (1991)*. Wellington: Ministry for the Environment.

Concerns addressed through recommendations

Many of the key issues for councils with the proposed NPSIB (that is, the parts that are going to have the greatest effect on current practices or will be most difficult to implement) will be addressed through the changes already recommended as part of the submissions analysis/policy review process. Key changes are outlined below and in further detail elsewhere in this report.

We have recommended the removal of the requirement to split identified SNAs into High or Medium value categories, with a single classification for SNAs instead. This will remove a layer of complexity and reduce the extent of reworking required of those councils that have already identified SNAs. In addition, we have recommended some changes to the criteria for identifying SNAs to keep them largely in line with the original BCG recommendations, which can, and have already been, accessed by councils. This will reduce the likelihood of any re-work being needed.

We have also recommended a few changes to the general rules that apply outside SNAs to maintain the flexibility for councils to manage this biodiversity in ways that work for their regions and contexts. Councils will retain the ability to specify controls outside SNAs to maintain indigenous biodiversity, beyond a bottom line of using the effects management hierarchy to manage significant adverse effects on indigenous biodiversity. This will enable councils to apply the NPSIB in ways that consider the contexts of their regions or districts when making objectives, policies and methods.

We have recommended paring back some other provisions to reduce the overall requirements of councils. We have recommended the highly mobile fauna provisions apply only to areas 'used by' highly mobile fauna, the requirement to survey has been removed, and a list of specified highly mobile fauna has been added as an appendix to provide greater certainty. We have also recommended the restoration provisions be pared back, with several provisions becoming non-regulatory. This will reduce the increase in the regulatory requirements of the NPSIB, reducing overall resourcing strain while providing guidance for those councils seeking to carry out restoration work. The breadth of the monitoring provisions in the proposed NPSIB caused some councils to wonder how they would be implemented give the current budgetary constraints. We have recommended central government take a leading role in some of the monitoring requirements of the NPSIB, including setting up a National Monitoring Framework. This will take some of the burden off councils, although they will still need to monitor on the ground.

Recommendations and decisions

Recommendations for possible regional exemptions

26a) Do not provide exemptions from the NPSIB for any councils or regions of Aotearoa.

Minister's decision

Agree

27 Implementation support

Context

Effective implementation is critical to the success and the outcomes of the NPSIB. The policies presented in the NPSIB will be primarily implemented by councils, but the implementation process will require wide involvement with iwi, hapū and whanau, landowners, industry, local and central government, and many other groups and organisations.

The implementation costs will fall on local government and those who will be working with councils to implement the policies, including hapū and iwi, landowners and industry groups. Although some councils have advanced biodiversity work programmes, others will take longer to ramp up. For most, the NPSIB's implementation will require additional investments in budgets and resources.

Alongside this, local and central government and other organisations will need to support landowners, hapū and iwi, and councils with non-regulatory measures.

The need for implementation support was strongly emphasised and recommended by the BCG in its 2018 report to the Government.[72] It was also a common request from submitters during public consultation on the NPSIB. Councils frequently mentioned implementation support would be needed for them to give effect to the NPSIB. This was particularly raised by small councils with fewer available resources than larger councils.

Response

Implementation planning has been done with the development of the NPSIB to address implementation challenges and explore potential supporting measures.

To complement existing local, regional and national support, a suite of new measures will be deployed by central government as part of the NPSIB package. It includes:

- guidance developed with stakeholders as needed, which may include technical guidance and case studies
- funding to support indigenous biodiversity protection, maintenance and restoration on private land
- support to assist councils with SNA identification and mapping
- pilots of new biodiversity incentives/support measures and the exploration of further measures
- further work to explore a biodiversity credit system.

Funding has been secured from Budget 2022 to help give this additional support.

Councils and other organisations are likely to develop additional measures to support the NPSIB's implementation.

[72] Biodiversity Collaborative Group. 2018. *Report of the Biodiversity Collaborative Group*. Wellington: Biodiversity (Land and Freshwater) Stakeholder Trust.

28 The Treaty of Waitangi/Te Tiriti o Waitangi and Treaty settlement commitments

The Crown has a duty to honour The Treaty of Waitangi/Te Tiriti o Waitangi and to protect Treaty settlements.

The Treaty Impact Analysis has concluded that the NPSIB will not impede the implementation of any existing settlements and upholds the principles of Te Tiriti.

Interactions between NPSIB proposals and The Treaty of Waitangi/Te Tiriti o Waitangi and Treaty Settlement Acts

In developing the proposed NPSIB, we considered how the proposals would best uphold the principles of The Treaty of Waitangi/Te Tiriti o Waitangi and redress settlements, and would best align with associated reports, such as the reports on Wai 262[73] and Wai 2358.[74] To ensure that the NPSIB does so, we have recommended the following.

- Include seven decision-making principles that must inform the implementation of the NPSIB. These require decision-makers to recognise and provide for the interrelationships between the health of people and the health of the environment and provide the overarching requirement to recognise the kaitiaki role of tangata whenua, bringing with it responsibilities of care and management.
- Require a partnership approach between councils and tangata whenua across the implementation of the NPSIB.
- Strengthen the kaitiaki role of tangata whenua to be involved in and be decision-makers for the management of indigenous biodiversity.
- Increase the use of te ao Māori, mātauranga and tikanga in the management of indigenous biodiversity.
- Enable the identification of taonga species and ecosystems in ways that provide a strong role for tangata whenua in their management and give them control over the extent of the information about taonga species put forward.
- Provide for opportunities for sustainable customary use in accordance with tikanga and taonga protection.
- Provide a flexible system for managing effects on indigenous biodiversity on Māori lands in recognition of historical disadvantages and tangata whenua aspirations for papakāinga and the limited opportunities to develop this land. This system enables tangata whenua, including owners of Māori lands, to work together with councils to achieve provisions that manage effects on indigenous biodiversity and enable papakāinga and other development, and to direct councils to consider incentives for indigenous biodiversity protection on Māori lands.

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[73] Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity (Wai 262)*. Wellington: Waitangi Tribunal.

[74] Waitangi Tribunal. 2012. *The Stage 1 report on the national freshwater and geothermal resources claims (Wai 2358)*. Wellington: Waitangi Tribunal; Waitangi Tribunal. 2019. *The Stage 2 report on the national freshwater and geothermal resources claims (Wai 2358)*. Wellington: Waitangi Tribunal.

- Ensure a broad definition of Māori lands, which includes Treaty settlement land,[75] noting that it does not include land that is purchased post settlement with Treaty settlement funds.

The process followed in respect of the principles of The Treaty of Waitangi/Te Tiriti o Waitangi is also addressed in section 2 of Part B, above.

Conclusions

Officials have had particular regard to Treaty settlements, and detailed analysis is included in the Treaty Impact Analysis. We consider the proposed NPSIB will not impede the implementation of these settlements in their local contexts. Local authorities will be able to implement the proposed NPSIB, while also meeting their obligations to the settlement Acts in their regions, districts and rohe. In addition, it is likely the effective implementation of the proposed NPSIB will promote consistent desired outcomes, including improved health for the local environment and rivers, improved community engagement in natural resource management, and increased recognition of te ao Māori.

Recommendations and decisions

Recommendations for The Treaty of Waitangi/Te Tiriti o Waitangi and Treaty settlement commitments

28a) Incorporate the overarching decision-making principles that must inform the implementation of this NPSIB, which requires decision-makers to recognise and provide for the interrelationships of the health of people and the health of the environment and meet the overarching requirement to recognise the kaitiaki role of tangata whenua, bringing with it responsibilities of care and management.

28b) Strengthen the kaitiaki role of tangata whenua, ensuring that they are to be involved in and are decision-makers for the management of indigenous biodiversity.

28c) Require a partnership approach between councils and tangata whenua across the implementation of the NPSIB.

28d) Increase the use of te ao Māori, mātauranga and tikanga in the management of indigenous biodiversity.

28e) Enable the identification of taonga species and ecosystems in ways that provide strong roles for tangata whenua in their management and give them control over the extent of the information about taonga species put forward.

28f) Provide opportunities for sustainable customary use in accordance with tikanga and taonga protection.

28g) Provide a flexible system for managing effects on indigenous biodiversity on Māori lands in recognition of historical disadvantages and tangata whenua aspirations for papakāinga and the limited opportunities to develop this land.

[75] Being land held by a Post-Settlement Governance Entity (as defined in the Urban Development Act 2020) where the land was transferred or vested and held (including land held in the name of a person such as a tīpuna of the claimant group, rather than the entity itself):

(i) as part of redress for the settlement of Treaty of Waitangi claims; or

(ii) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed.

28h) Enable tangata whenua, including owners of Māori lands, to work together with councils to achieve provisions that manage effects on indigenous biodiversity and enable papakāinga and other development, and also direct councils to consider incentives for indigenous biodiversity protection on Māori lands.

28i) Specifically recognise that nothing in the NPSIB limits any relevant provision of any iwi participation legislation (as defined in section 58L of the RMA).

28j) Ensure a broad definition of Māori lands, including Treaty settlement land.

Minister's decision

Agree

Appendix 1: Consolidated recommendations

Recommendations

1a) Amend the language around wetlands to clarify they are in scope of the NPSIB, and that the NPS-FM provisions prevail in the event of a conflict.

1b) Amend 1.7(3) 'Maintenance of indigenous biodiversity' to make clear the intent and amend as needed to provide clarity and improve workability.

1c) Amalgamate the objectives into one objective that describes the main goal of the NPSIB (to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss after the commencement date). This objective would be supported by the role of tangata whenua as kaitiaki, and people and communities, including landowners, as stewards. It would also include recognising that protection and restoration are needed to achieve the overall maintaining. It would also recognise that this is to be achieved while providing for the social, economic and cultural wellbeing of people and communities now and in the future.

1d) Amend the policies to form the basis of the changes made to the implementation requirements.

2a) Remove Hutia te Rito from the NPSIB.

2b) Replace Hutia te Rito with decision-making principles to reflect the intent behind the incorporation of Hutia te Rito in the NPSIB.

2c) Consolidate the preamble text description of Hutia te Rito and reshape it so it applies to the decision-making principles.

2d) Apply a strong role for the decision-making principles in implementing the NPSIB by:
- amending clause 3.2 so it requires local authorities to engage with tangata whenua and communities to develop a local approach to giving effect to the decision-making principles
- including a policy to give effect to the decision-making principles.

3a) Strengthen the references throughout the NPSIB so it is clear that tangata whenua are partners, and strengthen and clarify local authority obligations to engage with tangata whenua.

3b) Add more detail about the types of processes councils will be developing in partnership with tangata whenua, such as regional biodiversity strategies, determining taonga species and enabling mātauranga Māori at a local level.

3c) Require councils to enable the use of mātauranga Māori instead of taking all reasonable steps to incorporate mātauranga Māori.

3d) Remove uncertain wording.

3e) Strengthen the role of tangata whenua in decision-making, by specifying the RMA mechanisms to be used by local authorities to involve tangata whenua.

3f) Include specific obligations for local authorities to document the decisions they make on those RMA mechanisms.

3g) Distinguish between the roles of landowners, people and communities as stewards and tangata whenua as kaitiaki in provisions.

3h) Require local authorities to regard the different levels of whānau, hapū and iwi decision-making when involving tangata whenua or engaging with tangata whenua.

3i) Remove the limitation on sustainable customary use to indigenous vegetation, so local authorities are required to enable opportunities for sustainable customary use of indigenous biodiversity.

3j) Add the phrase 'according to tikanga' to sustainable customary use.

3k) Clarify that the obligation to enable opportunities for sustainable customary use applies whether it occurs in an SNA or identified taonga.

4a) Make minor changes to clarify terminology, remove superfluous attributes and to account for the removal of the High/Medium split; add a glossary to explain ecological terms.

4b) Amend the introductory part to exclude areas from being SNAs (with appropriate safeguards) if they would only qualify based on commonplace widespread flora (Threatened or Declining) or habitat of one At Risk (Declining) species.

4c) Amend Appendix 1(3) 'Manner and form of assessment' so the various information requirements only apply to the extent to which information is available.

4d) Amend the assessment principles for criterion A 'Representativeness' to show that, although representativeness can include commonplace or degraded indigenous vegetation, this is not necessarily the case and depends on the context of the ecological district.

4e) Limit the application of criterion C 'Rarity and distinctiveness' to Threatened and At Risk (Declining) species listed under the New Zealand Threat Classification System (as per exposure draft).

4f) Amend the attribute under criterion C6(d) 'less than 30 per cent of former extent' to read 'less than 20 per cent…' (as per exposure draft).

5a) Amend to require regional councils to work together with territorial authorities to identify and map SNAs.

5b) Require site visits for potential SNAs where the values or extent of the SNAs are disputed by the landowner (if practicable). If not practicable (for example, because the site is inaccessible or access is denied), the best available information will be used to verify the SNAs.

5c) Clarify that existing SNAs do not require site visits if the methodology originally used to identify them is consistent with the approach in Appendix 1 of the proposed NPSIB (in the opinion of a suitably qualified ecologist).

5d) Note councils may look to the Ministry for the Environment to provide verification or audits of the opinion in 5(c).

5e) Require any new SNAs to be added at the time of the next plan or plan change (rather than within two years).

5f) Provide a streamlined requirement for the identification of SNAs on public conservation land, by allowing the following areas of public conservation land to be automatically considered SNAs:

- a large area managed under common protection status, such as a national park
- a contiguous area comprising protected areas with a similar protection status under a conservation management strategy
- a well-defined landscape or geographical feature such as an island or mountain range.

Other pieces of PCL that do not come within those categories must be assessed using the Appendix 1 criteria.

5g) Add a requirement for physical inspection (if practicable) where a landowner disputes the boundaries or values of an SNA.

5h) Clarify that councils with existing SNAs need to confirm that they used an approach equivalent to Appendix 1 (that is, they do not need to reassess each SNA on a site-by-site basis).

5i) Note that establishing and maintaining a national database of SNAs (including their attributes and monitoring information) is important for the effective implementation of this Part, and would also help in meeting the requirements of clause 4.1.

5j) Note that councils with high indigenous vegetation cover and/or low rating bases may need financial support for meeting the requirements relating to SNAs.

5k) Note that all timing provisions are now grouped together in Part 4 'Timing' of the proposed NPSIB.

6a) Require local authorities to work in partnership with tangata whenua to protect taonga as far as practical and involve tangata whenua, to the extent they wish to be involved in the management of taonga.

6b) Require local authorities to work together with tangata whenua in developing processes for information management, to ensure that, where information is provided by tangata whenua in their role as kaitiaki, the information is kept confidential between them and the local authorities where appropriate.

6c) Require that, where a taonga coincides with an SNA:

- the identified taonga must be managed in a manner consistent with the management approach applying to the SNA and the mauri and values of the taonga
- the historical, cultural and spiritual relationship of tangata whenua with the taonga must be taken into account in managing the SNA, except that, where it is located on Māori lands, the Māori lands provisions apply.

6d) Differentiate between those taonga that tangata whenua inform territorial authorities about but do not wish to have included in plans (acknowledged taonga), and those identified in plans (identified taonga), so appropriate levels of management and protection can be applied to each of these.

6e) Add another item to the description of taonga that can be identified in plans, so it covers the historical, cultural and spiritual relationship of tangata whenua with taonga, if tangata whenua agree.

6f) Clarify that if taonga species are on Māori lands, the Māori lands provisions apply for management.

6g) Clarify that where adverse effects on identified taonga are considered, consideration is given to the adverse effects on:

- the mauri of the taonga.
- the values of the taonga as identified by tangata whenua.
- the historical, cultural or spiritual relationships of tangata whenua with the taonga, as identified by tangata whenua.

6h) Require local authorities to work with tangata whenua to consider opportunities for allowing the sustainable customary use of identified taonga in accordance with tikanga Māori – and in a way that is consistent with taonga protection, whether or not an identified taonga is located in an SNA.

6i) Require councils to inform landowners of the presence of taonga before the taonga are identified in a proposed plan.

7a) Add a list of specified highly mobile fauna to the NPSIB (Appendix 2).

7b) Improve clarity by making several drafting changes, including:
- deleting the requirement to 'survey' for highly mobile fauna
- changing the focus to managing adverse effects rather than the fauna directly
- requiring areas to be 'intermittently used by' highly mobile fauna (not just 'present').

7c) Ensure that highly mobile species that use waterbodies and the coastal marine area are not excluded from the provisions.

8a) Revise the effects management hierarchy to 'avoid – minimise – remedy – biodiversity offset – biodiversity compensation'.

8b) Replace 'possible' with 'practicable' for subclauses 1.5(4)(a), (b) and (c).

8c) Remove 'demonstrably' and include 'then' at the end of each step.

8d) Include a requirement for decision-makers to be satisfied applicants have demonstrated how each step of the effects management hierarchy has been applied and to ensure the principles in Appendices 3 or 4 are applied as appropriate.

8e) Add an additional final step as subclause 1.5(4)(f): 'if biodiversity compensation is not appropriate, the activity itself is avoided'.

9a) Amend the biodiversity offset and compensation definitions to ensure wording consistent within the document and with other national direction.

9b) Set the level of residual adverse effects to which biodiversity offsets and biodiversity compensation apply at 'more than minor'.

9c) Add a glossary of uncommon ecological terms used in the technical appendices.

9d) Make minor drafting changes to improve clarity, and to ensure consistent wording within the document and with other national direction.

9e) Simplify the preamble to Appendix 3.

9f) Re-label Principle 1 'Adherence to mitigation hierarchy' as 'Adherence to effects management hierarchy' and make minor drafting changes for clarity.

9g) Re-label Principle 2 'Limits to offsetting' as 'When biodiversity offsetting is not appropriate', and make minor drafting amendments to this principle to help clarify how it applies.

9h) Amend Principle 3 'No net loss and preferably a net gain' to 'Net gain', and make associated amendments.

9i) Amend Principle 4 'Additionality' to simplify the wording to be consistent with other government guidance and policy.

9j) Add a new principle on 'leakage'.

9k) Delete Principles 5 'Like-for-'like', 9 'Trading up', 10 'Offsets in advance' and 11 'Proposing a biodiversity offset'.

9l) Make minor word changes to Principles 6 'Landscape context', 7 'Long-term outcomes' and 14 'Transparency' to improve clarity and workability and to be consistent with other national direction (such as the NPS-FM) and best practice guidance.

9m) Amend Principle 8 'Time lags' to include 'as appropriate, a longer period (but not more than 35 years)'.

9n) Amend principle on ‘Science and Mātauranga Māori’ to ‘being informed by science and mātauranga Māori’.

9o) Amend Principle 13 ‘Stakeholder participation’ to clearly differentiate between tangata whenua, other stakeholders and the public.

9p) Make minor drafting changes to improve clarity, and to ensure consistent wording within the document and with other national direction.

9q) Simplify the preamble to Appendix 4.

9r) Re-label Principle 1 ‘Adherence to mitigation hierarchy’ as ‘Adherence to effects management hierarchy’, and make minor wording amendments for clarity.

9s) Re-label the principle on ‘Limits to biodiversity compensation’ as ‘When biodiversity compensation is not appropriate’, and make minor drafting amendments to this principle to help clarify how it applies.

9t) Amend Principle 3 ‘Scale of biodiversity compensation’ to replace ‘proportionate’ with ‘outweigh’, and clarify this also applies to situations where indigenous species rely on indigenous species for their survival.

9u) Amend Principle 4 ‘Additionality’ to simplify the wording to ensure consistency with other national direction and guidance.

9v) Add a new principle on ‘leakage’.

9w) Minor word changes to Principle 5 ‘Landscape context’, 6 ‘Long-term outcomes’ and 13 ‘Transparency’ to improve clarity and workability, and to ensure consistency with national policy (especially the NPS-FM) and best practice guidance.

9x) Amend Principle 7 ‘Time lags’ to include ‘as appropriate, a longer period (but not more than 35 years)’.

9y) Amend Principle 8 ‘Trading up’ species classifications to read ‘... Threatened or At Risk (Declining) species’.

9z) Amend Principle 9 ‘Financial contributions’ to clarify they are considered only when there are no other effective options, and the contributions have to provide actual biodiversity gains.

9aa) Delete Principle 10 ‘Biodiversity compensation in advance’.

9bb) Amend Principle 13 ‘Stakeholder participation’ to clearly differentiate between tangata whenua, other stakeholders and the public.

10a) Remove subclause 1.7(4) from the NPSIB.

10b) Amend policies to clarify the outcomes sought.

10c) Include directions on adverse effects critical to achieving stated outcomes within relevant NPSIB Part 3 provisions as appropriate.

11a) Amend the directive ‘must recognise’ to ‘must consider’.

11b) Frame the clause within a subpart of Part 3, focused on broad approaches to implementation.

11c) Make minor changes so references to relevant groups and tangata whenua are more direct.

11d) Remove specificity as to whom partnerships are between.

11e) Amend relevant subclauses to refer to ‘people and communities’ instead of specific groups.

11f) Amend this clause to recognise landowners, people and communities as stewards.

11g) Provide for the role of tangata whenua as kaitiaki in a standalone clause.

12a) Make minor corrections and reword to improve the workability and provide greater clarity, with no change to intent.

12b) Require local authorities to give effect to these clauses by making changes to their policy statements or plans.

12c) Remove the High/Medium distinction between types of SNAs, extend the effects management hierarchy to apply to the effects of the specific activities listed on any SNA and make any associated wording changes needed as a result.

12d) Subdivision, use or development affecting an existing SNAs (or equivalent) must avoid the identified adverse effects.

12e) Amend so the effects management hierarchy applies from commencement date.

12f) Include At Risk (Declining) species in subclause 3.9(1)(a)(iv).

12g) Delete subclause 3.9(1)(a)(iii) and replace it with the following subclauses:

- Subclause (c): fragmentation of the SNAs and the loss of buffers or connections within the SNA.
- Subclause (d): the function of the SNA as a buffer, or connection, to other important habitats and ecosystems.

12h) Include a subclause clarifying:

- that decision-makers need to make sure applicants demonstrate how each step of the effects management hierarchy has been applied; and
- when biodiversity offsetting or compensation is applied, which principles in Appendices 3 and 4 must be complied with, and which must be had regard to.

12i) Identify which developments and uses have specific management regimes in other clauses of the NPSIB.

12j) Provide for sustainable customary use of indigenous biodiversity in accordance with tikanga.

12k) Delete the exemption for kānuka and mānuka SNAs.

12l) Amend clause 3.9(4)(b) to provide for use and development needed to address a high risk to public health and safety.

12m) Exempt from the avoids and effects management hierarchy works undertaken:

- by or on behalf of the Crown on public conservation land
- for the purpose of managing Te Urewera in accordance with a management plan.

12n) Include an 'opt in 'exemption option for local authorities for specified biodiversity-based covenants, undertaken at the request of the covenantors and with the written permission of the covenantees, and include a definition of 'specified covenant'.

12o) Provide for Māori lands exceptions in a specific clause relating to managing SNAs on Māori lands.

12p) Replace the definition of 'nationally significant infrastructure' with 'specified infrastructure' to align with the NPS-FM where appropriate. Include:

- defence facilities operated by the NZDF, for public flood control, flood protection or drainage works
- lifeline utilities (as defined in the Civil Defence Emergency Management Act 2002)
- regionally significant infrastructure

- infrastructure needed to support urban housing growth in identified areas.

12q) Make clear that the consent pathway for specified infrastructure includes upgrades.

12r) Amend subclause to provide a consent pathway for specified infrastructure that provides significant national or regional public benefits.

12s) Add a subclause requiring mineral extraction to provide significant national public benefit that could not otherwise be achieved using resources within Aotearoa.

12t) Include a limit on the exemption for coal mineral extraction that restricts the consent pathways within SNAs to the operation and expansion of existing coal mines only, and limit the consent pathway for existing thermal coal mines to 31 December 2030.

12u) Add a subclause requiring aggregate extraction to provide significant national or regional public benefits that could not otherwise be achieved using resources within Aotearoa.

12v) Move the definitions of 'functional need' and 'operational need' to the interpretation clause.

12w) Add to the application section a provision noting that nothing in this National Policy Statement applies to renewable electricity and, for the avoidance of doubt, renewable electricity generation, electricity transmission network assets or renewable electricity generation assets are not 'specified infrastructure' for the purposes of this National Policy Statement, on the basis that:

- the Government is consulting on amendments to the National Policy Statement for Renewable Electricity Generation and the National Policy Statement on Electricity Generation
- it is preferable to provide certainty in the regulatory environment for renewable electricity generation and electricity transmission until the consultation process concludes and amended regulations are confirmed by Cabinet.

12x) Provide for a new use or development associated with a single dwelling on an undeveloped allotment created before the commencement date of the NPSIB using the effects management hierarchy for managing adverse effects on any SNA.

12y) Amend the subclause on the maintenance and restoration of indigenous biodiversity, for clarity, and to ensure that work is undertaken in accordance with either the effects management hierarchy or a restoration management approach, and that it does not result in the permanent destruction of significant habitat of indigenous biodiversity.

12z) In the case of habitat established for reasons other than biodiversity restoration, ensure that no more indigenous vegetation or habitat is cleared than is necessary to achieve the primary purpose.

12aa) Insert a subclause to exempt harvesting from the effects management hierarchy if it has a permit under the Forests Act 1949, but ensure that the effects of any other associated activities are managed through the effects management hierarchy.

12bb) Broaden the plantation forestry subclause to confirm it applies to all plantation forests (including indigenous).

13a) Retain a different effects management approach for plantation forestry in the NPSIB.

13b) Confirm this approach applies only to the operation of a plantation forest once established, and not to new planting within SNAs.

13c) Remove the concept of a 'plantation forest biodiversity area'.

13d) Confirm the provisions apply only where a plantation forest meets the significance criteria in Appendix 1 of the proposed NPSIB.

13e) Apply the same effects management approach to Threatened and At Risk (Declining) flora and – that is, manage adverse effects during the course of consecutive rotations to maintain populations of species present.

13f) Require other indigenous biodiversity to be maintained, as far as practicable.

14a) Change the heading and the wording to clarify the application to 'established' activities.

14b) Make it explicitly clear that existing use rights (sections 10 and 20A of the RMA) are not affected.

14c) Add references to maintenance, operation and upgrade, to clarify that such activities may fit within the category of established activities, provided the criteria are met.

14d) Amend to clarify the clause applies both inside and outside SNAs and the need to focus on the effects of existing activities on SNAs rather than the locations of the activities themselves.

14e) Provide direction to the user on what happens when they do not meet the criteria for an established activity, that is, the activity is now considered a 'new activity' and is to be managed under other clauses as relevant.

14f) Move the provisions relating to the maintenance of improved pasture for farming to appear on their own in a clause titled 'Maintenance of improved pasture for farming'.

14g) Include a reference to the *National List of Exotic Pasture Species* in the definition of 'exotic pasture species'.

14h) Amend the wording to clarify that the maintenance of improved pasture may continue if the land is not an uncultivated depositional landform.

14i) Add a subclause to specify that the maintenance of improved pasture may continue only if it will not adversely affect a Threatened or At Risk (Declining) species.

15a) Clarify that the provisions apply to all areas outside SNAs (except Māori lands).

15b) Alter the heading so the provision is not limited to rules; it can also include objectives, policies and methods.

15c) Structure the provision to focus it on the desired outcome (the management of adverse effects on indigenous biodiversity).

15d) Ensure that the provision only requires the use of the effects management hierarchy outside SNAs for significant adverse effects.

15e) Remove the ability for councils, when applying the effects management hierarchy to adverse effects outside SNAs, to consider biodiversity compensation alongside biodiversity offsetting.

15f) Structure the provision to ensure local authorities must apply the effects management hierarchy to significant adverse effects on indigenous biodiversity outside SNAs immediately to prevent potential gold rushes.

16a) Extend the types of land addressed by the definition of Māori lands so that as well as Māori customary and freehold land under Te Ture Whenua Māori Act 1993, it includes:

- Treaty settlement land
- Māori reservations under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953
- 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
- Māori reserves under the Māori Reserved Land Act 1955

- land that forms part of a natural feature and is a legal entity, such as Te Urewera
- the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

16b) Remove the provisions in subclause 3.9(2)(d) relating to Māori land and replace them with a new provision for Māori lands (which includes Treaty settlement land) that:

- requires local authorities to partner with tangata whenua, and owners of Māori lands land to develop objectives, policies and methods to maintain and restore indigenous biodiversity, and to manage adverse effects on indigenous biodiversity, and on SNAs and identified taonga, of occupation, use and development of Māori lands and, in doing so:
  - enable the new, occupation, use and development of Māori lands to support the social, cultural and economic wellbeing of tangata whenua
  - enable the provision of new papakāinga, marae and ancillary community facilities, dwellings and associated infrastructure
  - realise opportunities to provide incentives for indigenous biodiversity protection on specified Māori lands
  - enable alternative approaches to or locations for new occupation, use and development that avoid, minimise or remedy adverse effects on the SNA or identified taonga and enable options for offsetting and compensation
  - recognise and be responsive to the fact there may be no or limited alternative locations for tangata whenua to occupy, use and develop their lands
  - recognise there are circumstances where development prevails over indigenous biodiversity
  - recognise and be responsive to historical barriers tangata whenua have faced in occupying, using and developing their ancestral lands.

16c) Clarify the framework outlined above also applies to managing effects on identified taonga that are SNAs, or that are in SNAs on Māori lands.

16d) Clarify that the development-focused parts of the provision do not apply to the lands covered by legislation or covenants to protect indigenous biodiversity.

16e) Clarify that owners of Māori lands include:

- managers of land that forms part of a natural feature and is a legal entity
- managers if land that is the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014
- trustees of Māori lands.

16f) Clarify that the Māori lands provision does not apply to geothermal SNAs or SNAs in plantation forests, but that if Māori land ceases to be used for plantation forestry, then the Māori lands provision applies.

17a) Remove the specific reference to local authorities 'making and changing of policy statements and plans', and focus on the promotion of resilience and amending wording for clarity.

17b) Add a new subclause to recognise the role of indigenous biodiversity in mitigating the impacts of climate change.

18a) Minor amendments to clarify when to apply the precautionary approach and to align with the wider use of the approach in government policy.

18b) Simplify the wording of Policy 2 relating to the precautionary approach.

19a) Amend the geographic application to ensure geothermal ecosystems are in scope.

19b) Add a policy requiring the protection of geothermal SNAs as appropriate to the existing geothermal system classification or their vulnerability to development.

19c) Add an implementation requirement to Part 3 to manage the adverse effects on geothermal ecosystems. This new implementation requirement will:

- require local authorities (regional and territorial) to protect geothermal SNAs and manage the adverse effects of subdivision, use and development on these, as appropriate to the existing system classification
- where a geothermal system has not yet been classified or where there is insufficient information to classify a system, require local authorities to manage the adverse effects of subdivision, use and development on geothermal SNAs in accordance with the vulnerability of those SNAs to development
- require local authorities to apply the effects management approach to other SNAs, to the extent practicable
- require local authorities to promote the protection and, where practicable, restoration and enhancement of geothermal SNAs
- require local authorities to provide for the development of Māori lands in ways that enable tangata whenua to use and develop geothermal resources in manners consistent with the vulnerability of SNAs to development, or in line with any existing system classifications and in accordance with tikanga
- determine that, if there is a conflict between this clause and other provisions in the proposed NPSIB, this clause prevails, except for the provisions for managing the adverse effects of other activities affecting SNAs.

19d) Add to the definition of 'ecological district' that, in relation to geothermal ecosystems in the TVZ, the ecological district is the TVZ.

19e) Clarify that the provisions for managing adverse effects on SNAs of new subdivision use and development do not apply, and geothermal SNAs are instead managed according to the geothermal SNA provisions.

19f) Add definitions for 'geothermal ecosystem', 'geothermal system' and 'geothermal SNAs'.

19g) Clarify that a suitably qualified ecologist must confirm that if an area qualifies as an SNA and comprises or contains a geothermal ecosystem, that SNA is a geothermal SNA.

20a) Make the language more discretionary, so councils are enabled rather than required to promote restoration and enhancement.

20b) Include threatened and rare ecosystems and existing regional priorities as priorities for restoration.

20c) Retain 'degraded SNAs', remove 'former wetlands', and clarify 'buffering areas' through a minor change to its definition, as restoration and enhancement priorities.

20d) Retain wetlands as a restoration and enhancement priority in the NPSIB and use the NPS-FM definition of 'natural inland wetland'.

20e) Add a category to the list for prioritisation to describe indigenous biodiversity on Māori lands where this is advanced by the owners.

21a) Soften the language in some parts of this clause to better reflect the intent that restoration and reconstruction should be promoted after protection provisions have been prioritised.

21b) Clarify that the baseline assessment is completed by regional councils working with territorial authorities, and with tangata whenua (to the extent they wish to be involved).

21c) Clarify the implementation of provisions through use of the terms ‘urban environment’ and ‘non-urban environment’.

21d) Ensure that both urban environments and non-urban environments are promoted to have at least 10 per cent indigenous vegetation cover in each region, with the potential for councils to go further if desired.

21e) Retain the priorities for increasing indigenous vegetation cover, including those areas identified in the restoration priorities provisions.

22a) Retain RBSs as a requirement of the NPSIB but reduce the pre-determined content required.

22b) Retain and strengthen the importance of RBSs as collaboratively created documents that can support and promote other biodiversity outcomes.

22c) Extend the timeframes for the update and completion of RBSs to 10 years but retain the initiation timeframe of 3 years.

23a) Amend the wording so that tangata whenua are referenced before other groups with which regional councils must work, and add references to other relevant stakeholders.

23b) Retain the mātauranga Māori subclause.

24a) Amend to clarify that assessments and relevant information must be provided for resource consent applications for activities with more than minor adverse effects on indigenous biodiversity.

24b) Add a clause like that included in the BCG’s draft NPSIB, stating that detail provided should be commensurate with the scale and significance of the effects the activity may have on the environment.

24c) Add references to other relevant expertise alongside that of a suitably qualified ecologist, to ensure that the provision of advice on identified taonga and mātauranga Māori comes from appropriate sources.

24d) Add a subclause to specify that reports should contain descriptions of the existing ecological features and values of sites.

25a) Amend wording to clarify that local authorities must recognise the ‘interconnectedness’ of the environment, removing references to ki uta ki tai.

25b) Strengthen the direction of relevant strategies and planning tools, from ‘considering’ to ‘working towards aligning’.

26a) Do not provide exemptions from the NPSIB for any councils or regions of Aotearoa.

28a) Incorporate the overarching decision-making principles that must inform the implementation of this NPSIB, which requires decision-makers to recognise and provide for the interrelationships of the health of people and the health of the environment and meet the overarching requirement to recognise the kaitiaki role of tangata whenua, bringing with it responsibilities of care and management.

28b) Strengthen the kaitiaki role of tangata whenua, ensuring that they are to be involved in and are decision-makers for the management of indigenous biodiversity.

28c) Require a partnership approach between councils and tangata whenua across the implementation of the NPSIB.

28d) Increase the use of te ao Māori, mātauranga and tikanga in the management of indigenous biodiversity.

28e) Enable the identification of taonga species and ecosystems in ways that provide strong roles for tangata whenua in their management and give them control over the extent of the information about taonga species put forward.

28f) Provide opportunities for sustainable customary use in accordance with tikanga and taonga protection.

28g) Provide a flexible system for managing effects on indigenous biodiversity on Māori lands in recognition of historical disadvantages and tangata whenua aspirations for papakāinga and the limited opportunities to develop this land.

28h) Enable tangata whenua, including owners of Māori lands, to work together with councils to achieve provisions that manage effects on indigenous biodiversity and enable papakāinga and other development, and also direct councils to consider incentives for indigenous biodiversity protection on Māori lands.

28i) Specifically recognise that nothing in the NPSIB limits any relevant provision of any iwi participation legislation (as defined in section 58L of the RMA).

28j) Ensure a broad definition of Māori lands, including Treaty settlement land.