



## Legally Speaking



# Indigenous biodiversity

The New Zealand Government has released a draft National Policy on Indigenous Biodiversity (NPB) with the intention of creating a 'handbook' for local district councils on how to best protect indigenous biodiversity (IB) in each region.

## with Mia Hofstede Helmore Stewart Lawyers

IB means all plants, microorganisms and animals that exist naturally within New Zealand that have evolved or arrived without any human assistance. IB also includes migratory species visiting New Zealand.

Up until now, the Resource Management Act 1991 (RMA) required the identification and protection of Significant Natural Areas (SNA) regardless of whether the SNA was located on private or public land.

The definition of an SNA under the RMA is grey and provides little clarity on what "protection" means.

As a result, the identification and protection of these areas was left at each Council's discretion with many different approaches being adopted. The NPB intends to standardise the policies that apply to IB and SNAs.

SNAs are areas recorded throughout New Zealand that contain rare or threatened IB. With habitat loss being the main threat to IB, the SNA intends to conserve the areas that are left.

### The effect of the NPB and SNA for landowners

**Activity:** It appears that existing practices which are located near an SNA will generally be able to continue, including grazing, tourism and honey production (NPB provision 3.15).

However, intensification or a change of activity will likely require a resource consent accompanied by a report documenting the effects to the nearby SNA.

Provision 3.12 of the NPB notes that local authorities must prioritise SNAs or areas where: the ecological integrity is degraded, there are threatened and rare ecosystems, there is important connectivity or buffering functions and wetlands that have degraded or no longer retain indigenous vegetation or habitat for indigenous fauna.

Provision 3.22 requires local authorities to set targets of at least 10% indigenous vegetation cover for any urban or non-urban environments. With this target imposed on regional authorities, it is possible that tree felling or bush clearing activities that are



harmful to an SNA may be stopped and the increase of indigenous vegetation cover encouraged.

**Grazing / Pest Management:** Although restricted stock grazing and pest management is not a direct requirement of the NPB, if SNA livestock grazing and pest management is incorporated into the regional management plan a Council may be able to restrict livestock grazing, enforce fencing and weed and pest control as conditions of a resource consent.

Such amendments to regional management plans do not apply retrospectively, and if a current use was permitted at the time it began, the NPB provides that this use could continue.

### Implementation

The timeframe for the introduction of the NPB is as follows:

- Phase one: gazettal (proposed to occur in late 2022).
- Phase two: the release of detailed guidance on identification and funding to local Councils (year one).

- Phase three: SNA provisions which include identifying and mapping SNA (within initial five years).
- Phase four: ongoing implementation including the preparation of Plans and Policy Statements (within initial eight years).

### What steps should landowners be taking?

Landowners should consider the financial impact of a possible reduction to effective areas (due to the SNA and possible buffer) on a business plan and ongoing weed and pest management costs.

Although there are indications that landowners with an SNA located on their property may have opportunity for funding and support with respect to fencing, weeds and pest management from their local Council, it is likely that the long term management costs will exceed any Council allowance.

It is recommended that landowners liaise with a consultant as to the potential requirements of each SNA to enable business projections to reflect SNA management requirements and the associated costs.

It is our strong recommendation that landowners with a Significant Natural Area (SNA) located on their property seek the advice of a suitably qualified consultant.

It is also recommended that landowners who prepare and submit Farm Environment Plans ("FEPs") for audit should ensure that all existing uses are inputted into current FEPs.

The inclusion of business activities within FEPs will likely demonstrate to the Council that the activities currently being undertaken on the land are pre-existing, ongoing and necessary for the farming operation.

Landowners who intend to undertake a change of activity (particularly within the primary sector) on areas that are located within or near an SNA should carefully consider whether the proposed activity does or has the potential to damage or destroy the integrity of the SNA.

If so, obtaining a resource consent for the change in land use (e.g. cropping to dairy) is likely to become a lot harder to obtain and it may be possible that the conditions described above and SNA "buffer" zones are imposed.

It is our strong recommendation that landowners with an SNA located on their property who have any questions or concerns seek the advice of a suitably qualified consultant.