Proposed National Policy Statement on Indigenous Biodiversity

Preamble

This national policy statement sets out the objective and policies to manage natural and physical resources so as to maintain indigenous biological diversity (biodiversity) under the Resource Management Act 1991 ("the Act").

New Zealand has a unique natural heritage. Our land is young and geologically unstable. It has been separated from other major land masses for some 80 million years. In this isolation and geological instability our ecology has evolved to be genuinely unique. We have high endemism (species found nowhere else on the planet) and, in the absence of land mammals, such distinct ecosystems that New Zealand has been described as the closest scientists will come to studying life on another planet.

Yet in just 700 to 800 years, humans have wrought huge change through our use of land and other natural resources, and through our introduction (deliberate or otherwise) of exotic species that have become pests outside their natural environments.

As a consequence, many indigenous species have been lost and many that remain are now highly vulnerable and may also be lost unless we intervene to protect them from the many threats they face. We do this because biodiversity plays an important part in the quality of our environment and in the social, economic, and cultural well-being of New Zealand.

However, maintaining our biodiversity is one of our greatest environmental challenges. In 2000, a national strategy (prepared in accordance with the International Convention of Biological Diversity) identified, and sought to respond to, a decline in indigenous biodiversity. Government responses to the decline have been many and varied. One was to strengthen the Act's (and thereby local authorities') role in biodiversity protection. Delivering on that role has, however, proved challenging for local authorities for the following reasons:

- areas and habitats of indigenous species occur on private land and there can be tensions between the aspirations of private landowners for land use and development and the need to protect those areas habitats
- ecosystems are not always confined to definable sites; maintaining indigenous biodiversity requires more than the protection of sites of especially high biodiversity value
- the need to have regard to biodiversity is pervasive. Biodiversity will be relevant in the exercise of a wide range of functions under the Act
- there is a specific function within the Act for both regional councils and territorial authorities to maintain indigenous biological diversity. This is the only function within the Act that has embedded within it an objective ("maintain")
- the costs of protecting areas and habitats are local and often specific to an individual yet the benefits are local, regional and national
- the distribution of remaining indigenous vegetation and habitat types the responsibility for maintaining biodiversity does not fall uniformly across all regions and districts
- although there is a specific function within the Act, responses under the RMA are just part of a wider programme of actions by both public and private entities engaged in funding and managing protection, restoration, and recovery programmes

- overall success is reliant on the goodwill and sympathetic management of the many private landowners on whose properties indigenous species and ecosystems remain. That needs to be remembered in the way we manage for biodiversity under the Act.

This national policy statement seeks to:

1. bring more clarity to the role of local authorities in biodiversity management under the RMA than may be apparent on the face of the Act itself
2. support the existing good work of local authorities to date and secure the gains made in terms of regional and local planning responses
3. encourage local authorities that operate below best practice to enhance their efforts by introducing a "bottom-line" category of site whose values are to be recognised and protected through the RMA
4. help decision-makers appropriately balance the protection of biodiversity, the interests and values of tangata whenua, the rights and responsibilities of landowners and the broader national interests that may be at stake in future resource management decision-making.

In pursuing these aims, the national policy statement seeks to strengthen the contribution that the RMA makes to "halting the decline". Importantly though, there will be areas and habitats significant under section 6(c) that are not identified using the criteria promoted by this national policy statement. Sites valued for conservation in a more general sense, sites valued for landscape, amenity or cultural reasons or sites already identified by virtue of existing criteria for section 6(c) matters may be examples.

This national policy statement does not serve to limit section 6(c) but rather to make clear that at least one of the reasons an area or habitat may be significant is for its contribution to maintaining biodiversity and to ensure that the most critical areas and habitats are recognised. This national policy statement should not though be read as implying that local authorities cannot go further in their identification and protection of sites should they so wish.

This national policy statement also seeks to recognise the traditional relationship developed over centuries of close interaction by Māori with New Zealand's indigenous biodiversity. It also acknowledges the role that Māori have as kaitiaki who are involved in all aspects of biodiversity management including conservation, customary and commercial uses. The recognition of the above will assist in developing stronger working relationships between the Crown and Māori.

The national policy statement is to be applied by decision-makers under the Act. The objective and policies are intended to guide decision-makers in drafting plan provisions that recognise and protect biodiversity values, and in making decisions under the Act in respect of activities that may affect indigenous biodiversity.

However, the national policy statement is not meant to be a substitute for, or prevail over, the Act's statutory purpose or the statutory tests already in existence. Further, the national policy statement is subject to Part 2 of the Act.

For decision-makers under the Act, the national policy statement is intended to be a relevant consideration to be weighed along with other considerations in achieving the sustainable management purpose of the Act.

This preamble may assist the interpretation of the national policy statement, where this is needed to resolve uncertainty.

Pursuant to section 46 of the Resource Management Act 1991 the Minister for the Environment proposes the following National Policy Statement –

1. Title

This National Policy Statement is the Proposed National Policy Statement on Indigenous Biodiversity.

2. Commencement

This national policy statement comes into force on the 28th day after the date on which it is notified in the Gazette.

3. Interpretation

In this National Policy Statement, unless the context otherwise requires –

Act means the Resource Management Act 1991.

Biodiversity has the same meaning as biological diversity as included in the Act.

Biodiversity values means those attributes of an ecosystem that determine an area or habitat's importance for the maintenance of biodiversity nationally. Biodiversity values include species composition, habitat structure and ecosystem function.

Biodiversity offset means measurable conservation outcomes resulting from actions which are designed to compensate for more than minor residual adverse effects on biodiversity, where those affects arise from an activity after appropriate prevention and mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground with respect to species composition, habitat structure and ecosystem function.

Community means a group of organisms growing or living together in a given area.

Customary use means, according to tikanga, the extractive use of indigenous plants or animals by tangata whenua for traditional uses including food gathering, carving, weaving, and rongoa (traditional medicine).

Ecosystem means an ecological community together with its environment, functioning as a unit; an interacting system of living parts and non-living parts such as sunlight, air, water, minerals and nutrients.

Habitat means the area or environment where an organism or ecological community lives or occurs naturally for some or all of its life cycle or as part of its seasonal feeding or breeding pattern.

Indigenous species means a species or genetic variant found naturally in New Zealand, including migrant species visiting New Zealand on a regular or irregular basis.

Indigenous vegetation means any local indigenous plant community through the course of its growth or succession consisting primarily of native species and habitats normally associated with that vegetation type, soil or ecosystem or having the potential to develop these characteristics. It includes vegetation with these characteristics that has been regenerated with human assistance following disturbance or as mitigation for another activity, but excludes plantations and vegetation that have been established for commercial harvesting.

Land environment means a region or area classified under the Land Environments of New Zealand system.

Matter has the same meaning as defined in section 141 of the Act.

Provisions means objectives, policies, methods, rules or ancillary information (such as criteria) included within a regional policy statement or district or regional plan.

Restoration and enhancement means the active intervention and management of degraded biotic communities, landforms and landscapes in order to restore biological character, ecological and physical processes.

Maintenance means 'no net loss' as achieved by the protection of existing areas and habitats and/or the restoration and enhancement of areas and habitats as may be required through biodiversity off-sets or other initiatives.

No net loss means no overall reduction in:

a. the diversity of (or within) species

b. species' population sizes (taking into account natural fluctuation), and long-term viability

c. area occupied and natural range inhabited by species

d. range and ecological health and functioning of assemblages of species, community types and ecosystems.

Public conservation land refers to land administered by the Department of Conservation for whatever purpose. It excludes land administered under conservation legislation by other parties.

Threatened species means a species facing a very high risk of extinction in the wild and includes nationally critical, nationally endangered and nationally vulnerable species as identified in the New Zealand Threat Classification System lists.

At risk means a species facing a longer-term risk of extinction in the wild (either because of severely reduced or naturally small population size or because the population is declining but buffered by either a large total population or a slow rate of decline) as identified in the New Zealand Threat Classification System lists.

Any term or expression that is not defined in this National Policy Statement, but that is defined in the Act, has the meaning given to it by the Act.

4. Application

This national policy statement applies to land owned by any person except that it does not apply to public conservation land.

This national policy statement does not apply to the coastal marine area. Biodiversity in the coastal marine area should be managed in accordance with relevant policies of the New Zealand Coastal Policy Statement.

This national policy statement is not intended to be a statement of all that is required in order to fulfil obligations under section 6(c) of the Act. Instead it requires the recognition that at least one of the reasons an area or habitat may be significant for the purposes of section 6(c) is for its contribution to maintaining biodiversity.

5. Matter of national significance

The matter of national significance to which this national policy statement applies is the need to maintain New Zealand's indigenous biological diversity.

6. Objective

To promote the maintenance of indigenous biological diversity by protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to encourage protection and enhancement of biodiversity values more broadly while:

- supporting best practice of local authorities
- recognising the positive contribution of landowners as guardians/kaitiaki of their land
- recognising that the economic, social and cultural well-being of people and communities depends on, amongst other things, making reasonable use of land.

7. Policies

POLICY 1

For the purpose of this national policy statement, an area of significant indigenous vegetation or a significant habitat of indigenous fauna is an area or habitat whose protection is important for the maintenance of indigenous biological diversity.

POLICY 2

In considering the effects of any matter, local authorities shall, in addition to any area of significant indigenous vegetation or a significant habitat of indigenous fauna identified in, or by, provisions of any relevant regional policy statement, or regional or district plan, regard the following as significant indigenous vegetation or significant habitat of indigenous fauna:

a. the naturally uncommon ecosystem types listed in Schedule One

b. indigenous vegetation or habitats associated with sand dunes

c. indigenous vegetation or habitats associated with wetlands

d. land environments, defined by Land Environments of New Zealand at Level IV (2003), that have 20 per cent or less remaining in indigenous vegetation cover

e. habitats of threatened and at risk species.

POLICY 3

Any regional policy statement notified after the date on which this national policy statement takes effect, shall, in addition to any other provisions it has or is required to have relating to section 6(c) of the Act, include criteria for the identification of areas of significant vegetation and significant habitat of indigenous fauna that include, as a minimum, the areas and habitats identified in Policy 2a–d.

POLICY 4

District plans and any relevant regional plans shall identify, using (where practical) maps and/or schedules, areas of significant indigenous vegetation and significant habitats of indigenous fauna. In identifying these areas, decision-makers must include in their plans the criteria of the relevant regional policy statement and, within five years of this national policy statement taking effect, the criteria of Policy 2a–d (to the extent that these may be broader in scope than those of the relevant regional policy statement) and 2e (to the extent that existing information enabling the application of this criteria is available).

For the purpose of this policy, a relevant regional plan is a regional plan that controls activities that could adversely affect areas of significant vegetation and significant habitat of indigenous fauna.

POLICY 5

In addition to the inclusion in plans of any other provisions that the plan has or is required to have relating to section 6(c) of the Act, local authorities must manage the effects of activities through district and relevant regional plans (or be satisfied that the effects are managed by methods outside of district or regional plans) to ensure 'no net loss' of biodiversity of areas of significant indigenous vegetation and significant habitats of indigenous fauna by:

a. avoiding adverse effects

b. where adverse effects cannot be avoided, ensuring remediation

c. where adverse effects cannot be remedied, ensuring mitigation

d. where adverse effects cannot be adequately mitigated, ensuring any residual adverse effects that are more than minor, are offset in accordance with the principles set out in Schedule 2.

For the avoidance of doubt, in accordance with the principles of Schedule 2, there are limits to what can be offset because some vegetation or habitat and associated ecosystems, is vulnerable or irreplaceable. In such circumstances off-setting will not be possible and local authorities will need to take full account of residual adverse effects in decision-making processes.

POLICY 6

To promote the maintenance of biodiversity outside of identified areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to support the

resilience and viability of populations and species assemblages within identified areas and habitats, decision-makers should:

a. recognise the contribution that all remaining areas of indigenous vegetation make to the maintenance of indigenous biodiversity and encourage the retention of as many elements as possible

b. recognise the full range of potential adverse effects on indigenous biodiversity including, but not limited to, population fragmentation, degradation of non-living components (eg, water and soil), interruption to breeding cycles and migratory pathways, and increased exposure to invasive introduced plant and animal species that pose a threat to indigenous biodiversity.

c. encourage the retention of existing vegetation, whether indigenous or not (but not including recognised pest plants), that provides:

    i. habitat for indigenous species

    ii. seasonal food sources for indigenous species

    iii. ecological linkage between areas and habitats identified in accordance with Policy 4

    iv. a buffer to indigenous vegetation for areas and habitats identified in accordance with Policy 4

d. when the retention of existing vegetation and habitat will not achieve sustainable management, encourage measures that mitigate and offset adverse effects on indigenous species during, and subsequent to, removal or modification of that vegetation or habitat through harvest or clearance or other activity that may threaten the survival of affected species populations

e. encourage the planting of naturally occurring, locally sourced indigenous species and the creation of habitats for indigenous species as well as plant and animal pest control

f. encourage the establishment of additional indigenous riparian vegetation as a means of increasing connectivity and enhancing freshwater habitat for indigenous species

g. ensure human-made structures do not adversely impact on indigenous species by interfering with their natural migratory movements

h. consider both regulatory incentives (such as bonus development rights in exchange for protection and enhancement of vegetation and habitats) and non regulatory incentives, (such as technical advice and practical help) to support and encourage landowners to make appropriate land management decisions.

POLICY 7

To recognise and provide for the role of tangata whenua as kaitiaki, when developing and implementing regional policy statements and regional and district plans local authorities shall provide for:

a. tangata whenua values and interests to be incorporated in to the management of biodiversity

b. consultation with tangata whenua regarding the means of protecting and enhancing areas and habitats identified in accordance with Policy 4 that have particular significance to tangata whenua

c. active involvement of tangata whenua in the protection of cultural values associated with indigenous biological diversity

d. customary use of indigenous biodiversity according to tikanga.

POLICY 8

During the development of biodiversity-related provisions of regional policy statements, district plans and relevant regional plans (including prior to notification), local authorities will consult with, and provide reasonable opportunity for, the input of:

a. those whose properties would be affected by the proposed plan

b. the public

c. tangata whenua.

Schedule 1: Naturally uncommon ecosystems

Tentative 'common' name	Definition (ie, diagnostic classifiers) and notes	Vegetation structure
Coastal systems		
Dune deflation hollow	Raw/sand/depression/excessive drainage/coastal	Open land
Shell barrier beaches	Raw/shells/plain/coastal	Grassland, herbfield
Coastal turf	Raw/atmospheric salinity/coastal, extreme exposure	Open land, herbfield
Stony beach ridges	Raw-recent/gravel-cobbles/beach ridge/coastal	Scrub, shrubland, open land
Shingle beaches	Raw-recent/gravel-cobbles/beach/ coastal	Open land
Coastal rock stacks	Raw/silicic-intermediate and mafic bedrock/tor/coastal	Open land, herbfield, lichenfield, shrubland
Coastal cliffs on calcareous rock	Raw/calcareous rock/cliffs/coastal	Open land, lichenfield, herbfield, scrub, shrubland tussockland
Ultramafic sea cliffs	Raw/ultramafic/cliffs/coastal	Scrub, herbfield, lichenfield, open land
Coastal cliffs: quartzose, acidic and basic	raw/quartzose, acidic or basic rock/cliffs/coastal	open land, lichenfield, herbfield, scrub, shrubland tussockland
Marine mammal influenced sites	Seabirds and marine mammals-trampling and grazing/coastal	Open land – forest
Inland and alpine systems with raw or recent soils		
Screes of calcareous rock	Raw/calcareous/gravel-cobbles/talus/ (excessive drainage – near permanently saturated; inland-alpine)	Open land
Recent lava flows (<1000 years)	Raw/silicic-intermediate (volcanic)/ boulders-bedrock (numerous landforms)	Scrub, shrubland, treeland, forest, herbfield, mossfield, open land
Old tephra (>500 years) plains (= frost flats)	Silicic-intermediate (volcanic)/ depression/seasonally fluctuating water table/inland, >200 frost days year	Shrubland, scrub, tussockland
Frost hollows	Terrace/>200 frosts per annum	Shrubland, scrub
Cliffs, scarps and tors of mafic rock	Raw/mafic/cliff, scarp and tor/inland-alpine	Open land, herbfield, tussockland, shrubland
Calcareous cliffs, scarps and tors	Raw/calcareous/cliff, scarp and tor/ inland-alpine	Open land, herbfield, tussockland, shrubland
Inland outwash gravels	Raw-recent/silicic/sand-boulders/ plain/inland	Open land, herbfield, treeland
Braided riverbeds	Raw-recent/ sand-boulders/plain/ periodically flooded (see Johnson and Gerbeaux, 2004, p56)	Open land, herbfield
Sandstone erosion pavement	Raw/quartzose sandstone/bedrock/ hillslope, hillcrest	Open land
Recent volcanic debris landforms: dunes	Raw/acidic rock (volcanics)/sand/dune	Open land
Recent volcanic debris landforms: lava flows, boulderfields, debris flows and tephra	Raw/acidic rock (volcanics)/silt-sand-gravel-cobbles-boulders-bedrock-talus	scrub, shrubland, treeland, forest, herbfield, mossfield, lichenfield, open land

Cliffs, scarps and tors: quartzose to acidic	Raw/quartzose or acidic rock/bedrock/cliff, scarp and tor/inland-alpine	open land, herbfield, tussockland, shrubland
Ultrabasic landforms (incl. hills, cliffs, screes, boulderfields	Ultrabasic rock/inland	open land, lichenfield, herbfield, tussockland, shrubland, forest (very limited extent)
Boulderfields of selected rock types (acidic and calcareous)	Raw/acidic or calcareous rock/boulders/talus	open land, lichenfield, shrubland
Limestone erosion pavements	Raw/limestone/bedrock/hillslope, hillcrest/(alpine)	Open land
Other inland systems		
Inland saline (salt pans)	Groundwater salinity/semi arid/ depression (see also Johnson and Gerbeaux, 2004, pp 20, 22)	Herbfield, grassland
Leached terraces	Overmature/sand-gravel/terrace-plain/inland	Open land, herbfield, shrubland
Cloud forest	High cloud cover (<1500 sunshine hours and >200 rain days per annum)/inland	Forest
Geothermal systems		
Heated ground (dry)	Geothermal-excessive heat	Open land, mossfield, shrubland, scrub
Hydrothermally altered ground (now cool)	Geothermal-acid soils, toxic elements	Open land, shrubland, scrub
Acid rain systems	Geothermal-acid rain	Open land, scrub, treeland, forest
Fumeroles	Geothermal-superheated steam/acid rain/depression	Open land, shrubland
Geothermal streamsides	Geothermal-excessive heat/near permanently saturated (but water table not high)	
Subterranean or semi-subterranean		
Sinkholes	Raw/limestone, marble, dolomite/doline	Open land, shrubland, tussockland, flaxland
Cave entrances	Raw/limestone, marble, dolomite/cave entrance	Open land, herbfield

Schedule 2: Principles to be applied when considering a biodiversity offset

1. ***No net loss:*** A biodiversity offset should be designed and implemented to achieve in situ, measurable conservation outcomes which can reasonably be expected to result in no net loss and preferably a net gain of biodiversity.

   The offset design will demonstrate that:

   a. the key biodiversity components affected by the activity are identified, and an explanation provided as to how this was done, the basis for doing so, and how the key biodiversity components have been included in the offset design

   b. the anticipated losses of biodiversity at the site of the activity and the anticipated gains at the offset site have been calculated to determine "no net loss" and preferably "net gain" and documented

   c. appropriate measures/metrics that address the quality and quantity of biodiversity have been identified and used in the loss-gain calculations

   d. a suitable basis for assessing a 'like-for-like-or-better' approach to equivalence has been identified and used for the offset design

   e. any temporal loss of biodiversity between the time of the project's impact and the time the offset will mature has been considered and addressed

   f. intended conservation outcomes for biodiversity components within the offset are explicitly described

   g. uncertainty and risk is explicitly built into the loss-gain calculations.

2. ***Additional conservation outcomes:*** A biodiversity offset should achieve conservation outcomes above and beyond results that would have occurred if the offset had not taken place. Offset design and implementation should avoid displacing activities harmful to biodiversity to other locations.

   The offset design will demonstrate that:

   a. conservation gains have been predicted without the offset project ("without-offset") and with the offset, and on this basis, evidence is provided to show that the anticipated conservation outcomes would not have occurred without the offset.

3. ***Adherence to the mitigation hierarchy:*** A biodiversity offset is a commitment to compensate for significant residual adverse impacts on biodiversity identified after appropriate avoidance, minimisation and on-site rehabilitation measures have been taken according to the mitigation hierarchy.

   The offset design must demonstrate:

   a. how the activity addresses direct and indirect effects on specific components of biodiversity by:

      i. avoidance measures

      ii. minimisation measures

      iii. on-site rehabilitation measures

b. that the biodiversity offset only addresses the residual effects of the activity, namely those effects left after all the appropriate avoidance, minimisation and rehabilitation actions have been taken.

4. ***Limits to what can be offset:*** There are situations where residual effects cannot be fully compensated for by a biodiversity offset because the biodiversity affected is vulnerable or irreplaceable.

   These situations will be demonstrated when:

   a. a comprehensive assessment has been undertaken to determine whether, and if so which, highly vulnerable and irreplaceable biodiversity components are present and are affected by the activity. In determining when offsetting is not appropriate local authorities should have regard to whether the vegetation or habitat:
      i. represents a non-negligible proportion of what remains of its type
      ii. is now so rare or reduced that there are few options or opportunities for delivering the offset
      iii. is securely protected and in good condition so there is little opportunity to offset the biodiversity components in a reciprocal manner
      iv. is threatened by factors that cannot be addressed by the available expertise.

   If there are residual effects on biodiversity that are not, or seem likely not, to be capable of being offset, any measures taken to address them, by way of environmental compensation or otherwise, should not be considered to be a biodiversity offset for the purposes of Policy 3.

5. ***Landscape context:*** A biodiversity offset should be designed and implemented in a landscape context to achieve the expected measurable conservation outcomes taking into account available information on the full range of biological, social and cultural values of biodiversity and supporting an ecosystem approach.

   The offset design will demonstrate that:

   a. it contributes to and complements biodiversity conservation priorities/goals at the landscape and national level.

6. ***Long-term outcomes:*** The design and implementation of a biodiversity offset should be based on an adaptive management approach, incorporating monitoring and evaluation, with the objective of securing outcomes that last at least as long as the project's impacts and preferably in perpetuity.

   The offset design will demonstrate that:

   a. management arrangements, legal arrangements (eg, covenants) and financial arrangements (eg, bonds) are in place that allow the offset to endure as long as the effects of the activity, and preferably in perpetuity
   b. a biodiversity offset management plan is prepared and implemented which:
      i. contains specific, measurable and time-bound targets for the biodiversity offset
      ii. predicts when no net loss/net gain will be achieved
      iii. provides mechanisms for adaptive management of the offset, using the results of periodic monitoring and evaluation against identified milestones to determine whether the offset is on track and rectify if necessary

iv. establishes roles and responsibilities for managing, governing, monitoring and enforcing the offset

c. where milestones are not achieved, an analysis is undertaken to identify the causes of non-achievement and to revise the offset management plan to avoid similar occurrences

d. a decision-making process has been established to correct problems that arise and enable adaptive management of the biodiversity offset for the timeframe over which the offset's measurable conservation outcomes will be achieved and maintained.

7. ***Transparency:*** The design and implementation of a biodiversity offset, and communication of its results to the public, should be undertaken in a transparent and timely manner.