

National Policy Statement on Indigenous Biodiversity

Chris Fowler and David Pedley ask some questions about the “Biodiversity NPS” - what is its purpose, will it be effective, and what will be the impact on forestry?

Earlier this year, the Government notified a Proposed National Policy Statement on Indigenous Biodiversity (the **Biodiversity NPS**). This article examines the purpose of the Proposed NPS, whether it will be effective at achieving its objective, and the potential implications for the forestry sector.

What is a NPS?

A NPS is a form of national guidance that sets out the objectives and policies on an issue of national significance; in this case, New Zealand’s indigenous biodiversity. It sits at the top of the hierarchy of planning documents (as shown in Figure 1) and influences all that comes beneath it.

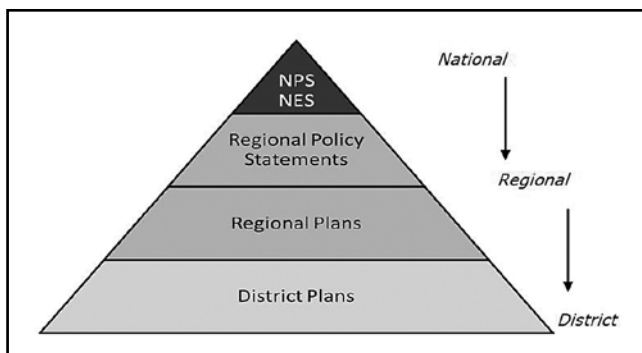


Figure 1 - RMA hierarchy

A NPS is slightly different to a National Environmental Standard (NES), such as the NES for Plantation Forestry. In general, an NES contains detailed standards and rules that directly control activities throughout the country. In contrast, a NPS contains more general statements in the form of objectives and policies that provide broad guidance for decision making under the RMA.

Once an NPS comes into force, all local authorities throughout New Zealand must amend their plans and policy statements to ensure they are consistent with the NPS. This often requires changes to the objectives and policies in those plans, as well as the potential for new rules to give effect to those provisions. In other words, a NPS can very quickly have direct effect on the ground and lead to more, or less, restrictions on activities.

What is the purpose of the Biodiversity NPS?

In simple terms, the objective of the Biodiversity NPS is to promote and encourage the maintenance and protection of indigenous biodiversity (native plants and animals) on private land throughout New Zealand. The reason for this

objective is the important role that biodiversity plays in the quality of our environment and in the social, economic and cultural well being of New Zealand.

Most would agree that this is a sensible and admirable objective. Few would argue against the need to protect our significant indigenous biodiversity for the benefit of current and future generations. However the real issue is whether a NPS and the increased regulation that will follow is an appropriate and effective method to achieve this objective.

The Biodiversity NPS does contain policies that encourage consideration of incentives and non-regulatory measures. However, there remains a real risk that it will simply be relied upon by local authorities to justify additional restrictions on private land use through rules in district and regional plans.

Will the Biodiversity NPS achieve its objective?

One of the biggest challenges for the Biodiversity NPS is that it seeks to influence activities and actions on private (typically rural) land. Achieving successful outcomes on private land poses some unique challenges that must be recognised and provided for when developing effective solutions.

In 2000, the Government funded a Ministerial Advisory Committee (MAC) to consult widely about biodiversity and private land. One of the key issues considered was whether a NPS on biodiversity would be a desirable and effective tool for maintaining and protecting biodiversity.

The findings and recommendations of this process are captured in a report entitled “Biodiversity and Private Land”, August 2000 (the **MAC Report**). Interestingly, the key recommendation of the MAC Report was that the Government should **not** proceed with an NPS for biodiversity and that to do so could result in adverse outcomes.

The key assumption that underpins the MAC Report is that “successful nature conservation requires willing and motivated landowners”. This is a simple and logical statement, but one which is often overlooked when implementing conservation measures for private land. The primary reason behind the recommendation not to proceed with a NPS for biodiversity was that it would not be effective at creating willing and motivated landowners.

As such, it would not achieve the objective of successful nature conservation.

The sentiments underlying the MAC Report are well captured in the Chairman's Overview, where the Chair Committee, Mr John Kneebone, states the following¹:

Tolerance, patience and respect for rural culture will more effectively halt the decline in indigenous biodiversity by promoting a vision and engaging land managers to adopt a management style that enhances the values in their care. Enlightened management is achieved by leadership and example. The spectre of an authoritarian official, imposing directions and sanctions for non-compliance only alienates landowners and puts at greater risk the values we seek to retain.

Many rural landowners would agree with the above statement, which reflects the inherent tension between restricting the use of private land for public benefit while respecting the sanctity of private property rights. As noted in the MAC Report, *"we ignore such sensitivities at our peril. They should not, and need not, be compromised in the drive to halt the decline in indigenous biodiversity"*².

In its current form, there is concern that the Biodiversity NPS does not reflect the findings of the MAC Report and will fail to achieve its purpose. As noted above, the likely outcome of the Biodiversity NPS is increased regulation on private land. However when attempting to encourage positive behaviour, which is a critical component of successful conservation, such regulation can be ineffective and potentially counterproductive.

As noted in the MAC report, the risk with regulation is that it may provoke resistance and undermine goodwill³. People do not like being told what to do on their own land, even if the intention of doing so is to protect a value which they generally support. Faced with such a prospect, landowners may move to an entrenched position, from which retreat becomes difficult and negative attitudes multiply. This atmosphere of mistrust can reduce the potential for positive biodiversity outcomes and amplify existing problems.

An example of where there has been an adverse reaction to regulation is in the Hurunui District in Canterbury. For several years, the Hurunui District Council adopted a regulatory approach to managing biodiversity within its district. This was done with the best intentions, but resulted in strong opposition from landowners, litigation, and withdrawal of landowner cooperation to protect biodiversity.

Learning from this experience, the Hurunui District Council is now implementing a new vision for protection

¹ Pg 7, para 4-5 of MAC Report

² Pg 6, para 5, MAC Report

³ Pg 35, para 1, MAC Report

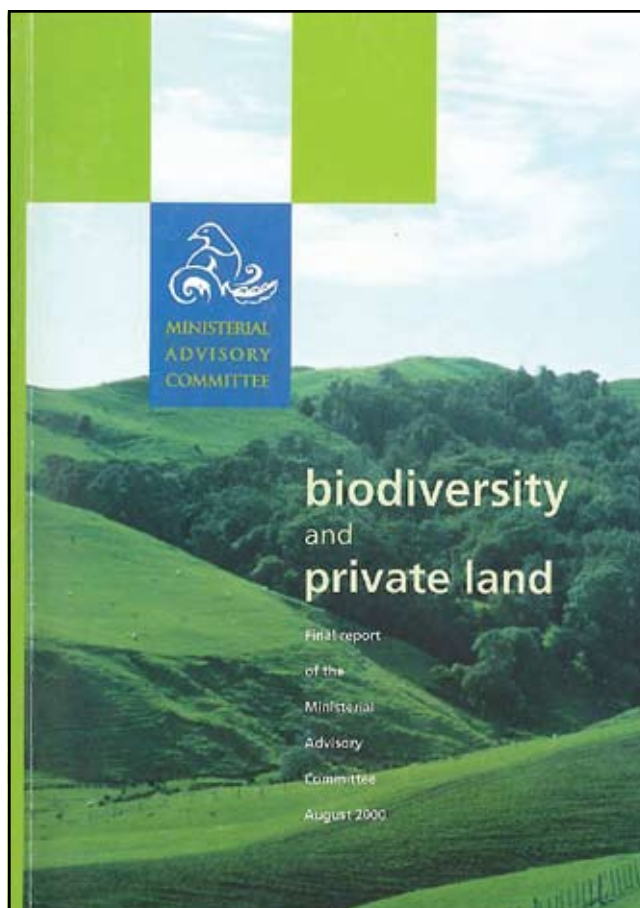


Figure 2 – MAC Report

of biodiversity, which moves away from a regulatory focus towards a non-regulatory, collaborative approach to biodiversity. This involves the adoption of a non-statutory Biodiversity Strategy⁴ which aims to support individual and community initiatives to generate positive biodiversity gains within the district. It will be interesting to see whether approaches such as this are encouraged or diminished as a consequence of the Biodiversity NPS.

What are the implications for forestry?

The Biodiversity NPS is likely to have an impact on forestry due to the presence of indigenous vegetation in forestry plantations throughout New Zealand. Although not directed solely towards forestry activities, some parts of the document are highly relevant to the forestry sector.

By way of example, Policy 6 of the Biodiversity NPS relates to those areas of biodiversity that are not specifically identified as being "significant". It promotes a range of measures to be adopted by decision makers to maintain and support the resilience and viability of biodiversity. This includes measures that are targeted towards non-indigenous vegetation, including the following:

⁴ Hurunui Biodiversity Strategy 2008

- encourage the retention of existing vegetation, whether indigenous or not (but not including recognised pest plants), that provides:
 - habitat for indigenous species
 - seasonal food sources for indigenous species
 - ecological linkage between areas and habitats identified in accordance with Policy 4
 - a buffer to indigenous vegetation for areas and habitats identified in accordance with Policy 4
- 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

It is possible that the above policy may be relied upon by local authorities to impose new restrictions on plantation forestry through district and regional plans, including the following:

- Greater regulation of buffer areas and riparian margins;
- Requirements for detailed management plans for indigenous biodiversity;
- Restrictions on timing of operations that may interfere with optimal economic returns;
- Restrictions on the ability to harvest existing plantations that contain indigenous biodiversity; and
- Additional direct costs imposed to assess biodiversity values for the public good.

Such measures have the potential to impose additional costs and constrain some forestry operations. For example, in many North Island plantations, indigenous vegetation will quickly regenerate in the understorey of plantation forest. By the time the plantation is ready for harvest, this indigenous understorey may be well developed and subject to rules introduced under the Biodiversity NPS that constrain the ability to harvest the plantation.

In addition, positive engagement with the Ministry for the Environment, Department of Conservation and local authorities may diminish and positive voluntary initiatives for the protection of biodiversity may not be pursued so readily if such work will attract increased RMA regulation.

Whether or not such outcomes eventuate will depend on the final wording of the Biodiversity NPS and how the document is interpreted and applied by local authorities. The jury is still out as to whether a NPS is the appropriate tool for the job or whether the risk of unintended consequences is too great. Whatever approach is adopted, it is critical that affected landowners are motivated and willing participants in order to achieve positive results for biodiversity.

What happens next?

Submissions on the Biodiversity NPS closed on 2 May 2011. The Ministry for the Environment will evaluate all the submissions received and may, where necessary, seek further comments.

After this, recommendations will be developed for the Minister for the Environment to consider. The Government also intends to wait for the release of a report from the Waitangi Tribunal relating to environmental, resource and conservation management before finalising the Biodiversity NPS.

Several submissions have been made highlighting the challenges discussed above and the potential implications for the forestry sector. It will be interesting to see how these submissions are received and whether they influence the general approach to managing biodiversity on private land in New Zealand.

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