

MEMORANDUM

Date: 8 November 2024
To: Lois Easton
From: Alice Balme | Kate Dickson

Ecosystems and Biodiversity – application of NPSIB and impact of Resource Management (Freshwater and Other Matters) Amendment Act 2024

1. The Resource Management (Freshwater and Other Matters) Bill was introduced to Parliament earlier this year. Relevantly, this Bill proposed to make changes to the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**), particularly in relation to the identification of Significant Natural Areas (**SNAs**), and also make changes to the regulatory framework regarding coal mining and other extractive activities.
2. This Bill was enacted on 24 October 2024 and is the Resource Management (Freshwater and Other Matters) Amendment Act 2024 (**Amendment Act**). As it has now been enacted, it has changed provisions of the Resource Management Act (**RMA**).
3. In light of the recent enactment of the Amendment Act, you have asked us to address the requirements that now apply in relation to the future identification of SNAs, and how these changes affect provisions relating to mineral extraction.

Provisions in the Amendment Act

4. The Amendment Act makes various changes to the RMA, including in relation to the requirement to identify SNAs under the NPS-IB. Relevantly, it has inserted new section 78 into the RMA, which provides that specific provisions in the NPS-IB do not apply for three years from 24 October 2024. This includes:¹
 - (a) Clause 2.2, Policy 6 (regarding the identification of SNAs);
 - (b) Clause 3.8(1), (6) and (8) (which requires assessments to be conducted to identify SNAs); and
 - (c) Clause 3.9(1) and (3) (which requires territorial authorities to notify a plan or plan change to include areas qualifying as SNAs, and to consider SNAs when doing a 10 year plan review).
5. Section 78 also specifies that the requirement to give effect to the NPSIB as soon as reasonably practicable does not apply during the three year period until 24 October 2027, but continues to apply in relation to the other provisions of the NPSIB.²
6. However, the section itself makes clear that the time limitations do not affect any function or requirement under other provisions of the RMA relating to areas of significant vegetation or indigenous biological diversity (e.g. the obligations in section 6 of the RMA), or any obligations of local authorities and other decision-makers to give effect to provisions in policy statements and plans relating to indigenous biological diversity.³
7. The Amendment Act also makes several changes to national direction directly, including changes to the NPSIB regarding the approach to coal mining (in particular, to treat coal mining consistently with other extractive activities in clause 3.11).⁴

¹ RMA, s 78(2).

² RMA, s 78(3).

³ RMA, s 78(4).

⁴ Resource Management (Freshwater and Other Matters) Amendment Act 2024, Schedule 2.

Effect of the amendments in relation to TTPP

8. As noted in previous advice to the Hearing Panel, even though the requirement to identify SNAs in accordance with the NPSIB has been stalled, the RPS still requires identification and mapping of SNAs in order to give effect to the RPS. Chapter 7 Policy 1 of the RPS contains a requirement to map SNAs in relevant regional and district plans, and it is a requirement of the RMA that a district plan “gives effect to” (i.e. implements) a regional policy statement.⁵
9. On this basis, the changes to the RMA and NPSIB made by the Amendment Act do not materially affect the requirements that apply to the TTPP. Notwithstanding the NPSIB requirements, the TTPP is already required to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna, under section 6(c) of the RMA, and to give effect to the RPS which requires mapping of these areas.
10. The Amendment Act introduces a distinction between “NPSIB SNAs” and other SNAs. An NPSIB SNA is one which meets the requirements of clause 1.6 of the NPSIB,⁶ which includes any area that is already identified in a policy statement or plan (including a proposed plan) as an area of significant indigenous vegetation or significant habitat of indigenous fauna.⁷ These areas are treated as SNAs unless or until determined otherwise.
11. This means that the TTPP is likely to contain some NPSIB SNAs, being the areas identified as SNAs when the TTPP was notified. This means that the NPSIB clauses relating to activities within an SNA and protection of SNAs will be relevant to these areas.
12. To the extent that the TTPP notes that further identification of SNAs is necessary, these further identified SNAs will not be treated as “NPSIB SNAs” (and therefore not subject to the provisions of the NPSIB in relation to SNAs). Section 78 provides that to the extent that a new area is identified as significant during the three year period to 24 October 2027, that area is not an NPSIB SNA, and the NPSIB does not apply to that new area.⁸
13. We note also that the changes to the NPSIB are largely in relation to implementation requirements of the NPS-IB, rather than changes to its policy direction. For example, while the mapping and identification implementation requirements of the NPS-IB have been stalled, the objectives and policies (except Policy 6) of the NPS-IB remain relevant, and the TTPP will still be required to give effect to these provisions to the extent that there is scope within submissions to do so.
14. The clauses of the NPSIB that have been suspended by the Amendment Act do not include the significance criteria in Appendix 1. Therefore, we consider the significance criteria are still relevant to determining areas of significance (where the RPS requires these to be identified), although note that any SNAs determined in accordance with the criteria will not be treated as NPSIB SNAs.
15. As the changes to the NPSIB made through the Amendment Act relating to mining seek to treat coal mining (in terms of effects on indigenous biodiversity) consistently with other mineral extraction activities, in our view it would be appropriate to align the TTPP’s provisions with this change in direction.

Conclusion

16. We trust our advice assists. Please let us know if you have any further questions.

Wynn Williams

⁵ RMA, s 75(3).

⁶ RMA, s 78(1).

⁷ NPSIB, cl 1.6, definition of SNA.

⁸ RMA, s 78(5).