



Submission on Proposed NPS Indigenous Biodiversity 2019

This submission is from the New Zealand Chapter of the Environmental Institute of Australia and New Zealand (EIANZ). EIANZ has 214 members in New Zealand and 159 who are Certified Environmental Practitioners (CEnvP).

General

EIANZ recognises the crisis New Zealand faces in the decline of our indigenous biodiversity from the use of land and natural resources. EIANZ generally supports the objectives, policies and implementation requirements proposed in the Draft National Policy Statement for Indigenous Biodiversity (NPSIB). EIANZ is concerned that, as currently formulated, the provisions of the Draft NPSIB will fail to achieve the objectives of the NPSIB, will lead to confusion and misinterpretation of the terms used in the NPSIB, and result in additional costs, delays and poor outcomes, as well as the potential for many disputes amongst practitioners and other stakeholders. Accordingly, EIANZ submits a number of recommended changes to key areas of the NPSIB. We lay these out below, along with a brief explanation of why we think the amendments are necessary. Whilst we acknowledge the process for the final determination of the NPSIB, should the opportunity arise, EIANZ wishes our submission to be heard.

Summary

EIANZ proposes the following amendments to the Proposed National Policy Statement for Indigenous Biodiversity (NPSIB) to make the NPSIB more effective and to provide more clarity for the NPSIB users and stakeholders (e.g. landowners, decision-makers, and legal and planning practitioners):

1. A “suitably qualified ecologist” be defined as an ***ecologist accredited under the Environment Institute of Australia and New Zealand’s Certified Environmental Practitioner certification programme for General Practice or Specialist Ecologist or equivalent.***
2. In particular, all district and regional-wide Significant Natural Areas (SNA) identification needs to be led by a ***Certified Environmental Practitioners with Specialist Ecologist accreditation.***
3. The NPSIB application of the NPSIB to wetlands (1.5(1)a) and “exception” needs to explicitly apply to wetlands and wetland complexes that grade from freshwater to tidal

across the Coastal Marine Area boundary. These are significant features of the larger harbours of the upper North Island.

4. The NPSIB must apply to all freshwaters, where SNA and threatened species triggers apply. **Policy 1.5(1)b should be deleted**, as the National Policy Statement for Freshwater Management 2019 (NPSFM) does not address indigenous biodiversity in waterbodies and freshwater ecosystems, it only addresses water quality and quantity.
5. The significance criteria in Appendices 1 & 2 need major modification as they drive the NPSIB. EIANZ is concerned that, as currently formulated, the attributes are often vague and open to a variety of interpretations. We recognise existing criteria that have been developed and successfully applied, notably the criteria applied in the Auckland Unitary Plan. Accordingly, EIANZ submits:
 - a. The SNA criteria need to follow the Significant Ecological Area factors (criteria) in the Auckland Unitary Plan¹, that have been reviewed and accepted by the Environment Court and High Court.
 - b. Appendix 2 – Management Framework has
 - i. vague descriptors i.e. “large size”, “typical suite of indigenous fauna that is characteristic of the habitat type”.
 - ii. Attributes of dubious value e.g. “The type locality of an indigenous species” – a cultural value, and “An indigenous species or plant community near its distributional limit” - which we expect to be changing with climate change, and “A special ecological or scientific feature” – special to whom?
 - iii. EIANZ do not support the separation of SNAs into ‘High’ and ‘Medium’. We see this as a dilution of the effort required to identify SNAs, and we foresee that, in practice, any SNA less than ‘High’ will be afforded much less protection. Accordingly, we propose the High & Medium attribute categories be merged into “significant” and a number of attributes be discarded.
6. EIANZ supports the provision for Regional Biodiversity Strategies (3.18) but submits that the strategies need to direct the protection, restoration and enhancement objectives, policies and methods in regional and district plans. To achieve this **Section 3.18 (2) needs to be amended: “Local authorities must ~~have regard~~ give effect to the relevant regional biodiversity strategy when developing restoration and enhancement objectives, policies and methods for inclusion in regional policy statements and plans.”**
7. The reference to “District Plan(s)” in the NPSIB be broadened to Regional and District Plans, and regional, unitary and district councils (definition of SNA, Clause 3.8 Identifying Natural Areas, 3.14 Identifying Taonga, 3.15 Highly mobile fauna). Biodiversity in some districts and unitary council areas are covered by regional rules in regional plans and unitary plans.

¹ Auckland Unitary Plan, Schedule 3 Significant Ecological Areas – Terrestrial Schedule

8. The Biodiversity Consultative Group recommended “Policy 20: Restoring and enhancing through transferable development rights.” EIANZ proposes this policy be added to the NPSIB. It would recognise the transitory spatial nature of development and biodiversity in the terrestrial and aquatic landscape.
9. Appendix 4 needs to be retitled: Principles of Effects Management. EIANZ submits that the language around mitigation, offsets and compensation of effects on biodiversity is already confusing ecologists, planners, legal counsel and decision-makers. We contend that the term ‘Effects Management Hierarchy’ should be the common terminology, and the term ‘compensation’ as used in Appendix 4, has specific ecological meaning within the hierarchy.
10. Highly Mobile Fauna (3.15). EIANZ supports the inclusion of provisions for highly mobile fauna but we are concerned about the poor language. The term ‘sometimes’ is unhelpful in ascertaining status to areas outside of the SNAs. EIANZ submits that the provision needs to be more specific, and say for ‘breeding, regular feeding, or as regular refuge’. We also note that wildlife management is a function of the Department of Conservation and do not consider that is the function of territorial or Regional authorities to provide information to local communities as outlined in 3.15(a). A duplication of effort is unnecessary and unhelpful in advising local communities of highly mobile fauna.

EIANZ contends that these policy gaps and other matters have the potential to compromise the survival of Aotearoa New Zealand’s indigenous vegetation and fauna. EIANZ further contends that the NPSIB must not undermine what has already been achieved in policy directions by some Councils.

Support

Generally, EIANZ strongly supports the National Policy Statement for Indigenous Biodiversity and particularly the following matters:

- The objectives and policies of the NPSIB;
- The ecological restoration provisions of the NPSIB;
- Regional Biodiversity Strategies, but they need to direct regional and district plans, as outlined above;
- The application of the effects management hierarchy in the NPSIB.
- The Biodiversity Off-setting and Effects Management provisions in the proposed NPSIB.
- Section 3.8 Identifying significant natural areas – as this will put pressure on Ministry for the Environment and councils to set national methodology and data standards for ecological reports prepared for resource consents (which are on the public record), and provide local, regional and national data on the state of biodiversity, and when and where the objectives and policies of the NPSIB are being met.

Definition Issues

Suitably qualified ecologist

The Proposed NPSIB fails to identify what a “suitably qualified ecologist” is in terms of the NPS and the application of this to Regional and District planning instruments.

A small number of Councils use this term in plans and a small number maintain a register of suitably qualified ecologists, so that the Council may vet the credentials and experience of ecologists undertaking assessments under the rules in a plan e.g. Gisborne DC. But most Councils seem undeterred by a range of unqualified and inexperienced consultants purporting to be ecologists, as well as ecologists acting outside their ecological specialisation, and accept their reports for plan changes and resource consent applications.

The Environment Institute of Australia and New Zealand (EIANZ) conduct a peer acceptance certification programme for General Practice (for ecologists with 5-10 years’ experience) and a certification programme for Specialist Ecologists (more than 10 years’ experience). The Certificate of Environmental Practice Programme (CEnvP) is recognised widely in Australia by federal, state and local government, and is included in Queensland state planning legislation for all accredited experts, and New South Wales, Tasmanian, Victorian EPA policies,^j and New Zealand for contaminated land specialist accreditation.

The CEnvP (Land Contamination Specialist) is the standard recognised by many New Zealand councils and it would be appropriate that the CEnvP (General Practice & Specialist Ecologist) were identified in the NPSIB as the accreditation standard for ecologists assessing and preparing applications to councils. It would also encourage ecologists working for councils or consultants to councils to meet certification standards when peer-reviewing ecological reports.

More information and application forms for the Certified Environmental Practitioner scheme can be found at <https://www.cenvp.org/>

A high level of professional ecological competence is needed to apply the Criteria for identifying significant natural areas (Appendix 1) to Policy 4. This requires a consistent and professional approach by Councils and professional ecologists. Other professions require certification standards and the time has come for this to be applied through the NPSIB.

Accordingly, we strongly submit that the definition of “suitably qualified ecologist” be defined as an ***ecologist accredited under the Environment Institute of Australia and New Zealand’s Certified Environmental Practitioner certification programme for General Practice or Specialist Ecologist or equivalent***

About EIANZ

Founded in 1987, EIANZ is a professional association of some 2000 environmental practitioners from across Australia and New Zealand. We provide opportunities for professional and academic dialogue across all sectors of the environmental industry.

A significant initiative of EIANZ is the Certified Environmental Practitioner (CEnvP) Programme, which is Australasia's first accreditation scheme designed exclusively for environmental practitioners and recognises environmental professionals in line with their professional counterparts from engineering, accounting, planning and architecture.

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Examples of the inclusion of Certified Environmental Practitioner accreditation in State and Federal legislation and Policies

i New Zealand

04-2012 [Users' Guide – National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health](#)

The New Zealand National Environmental Standard for contaminated land has identified CEnvP as one method for assessing a suitably qualified and experienced practitioner.

"One method for assessing whether someone is a 'suitably qualified and experienced practitioner' is to refer to existing professional bodies that currently certify New Zealand based environmental professionals. The requirement for being "suitably qualified and experienced" would apply to those members with demonstrated contaminated land experience. Examples of such professional bodies are:

- The Institution of Professional Engineers New Zealand (IPENZ) – see www.ipenz.org.nz
- The Certified Environmental Practitioner (CEnvP) scheme run by the Environment Institute of Australia and New Zealand (EIANZ) – see www.cenvp.org."

Australia - Federal

25-08-2011 [Government Response to the Report of the independent review of the Environment Protection and Biodiversity Conservation Act 1999 \(Recommendation 24\)](#)

One recommendation of the independent review of the EPBC Act in 2009 was to develop a Code of Conduct for consultants; the Government responded that it recognises CEnvP as an industry-based certification scheme.

"The government recognises that environmental industry-based certification schemes and voluntary codes already operate in Australia. An example of an industry-based certification scheme is the Certified Environmental Practitioner Program, which is an initiative of the Environment Institute of Australia and New Zealand, a professional body of environmental practitioners in Australasia. This program assesses environmental professionals in competency criteria of training, experience, professional conduct and ethical behaviour, and provides industry-wide accreditation."

28-09-2018 [Review of interactions between the EPBC Act and the agriculture sector](#)

Recommendation

12:

It is recommended that the Department of the Environment and Energy set out what constitutes an acceptable survey method to be undertaken by a proponent prior to the proponent undertaking the work. Additionally, it is recommended that the Department accredit, and regularly audit, a single professional association (e.g. Environment Institute of Australia and New Zealand) to in turn accredit relevant environmental professionals to undertake flora and fauna surveys in support of referrals, noting that individuals may still employ the services of non-accredited individuals.

Queensland

01-05-2011 [Schedule 8 of the Environmental Protection Regulation 2008](#)

[Environmental Institute of Australia and New Zealand submission on Proposed NPS Indigenous Biodiversity 2019](#)

Identifies the EIANZ as a prescribed organisation for the purposes of Section 115A of the Regulation. That in turn points to Sections 564 and 572(b)(ii) of the [Environmental Protection Act 1994](#) (the Act).

Section 564 of [the Act](#) provides a definition of a Suitably Qualified Person (SQP) for performing a regulatory function.

Section 572 of [the Act](#) sets out the criteria for deciding an application for approval as an auditor.

Both sections refer to being a member of a prescribed organisation.

New South Wales

9-09-19 [Engaging a consultant – NSW Environment Protection Authority \(EPA\)](#)

The NSW Environment Protection Authority (EPA) is the primary environmental regulator for New South Wales. It recognises the CEnvP Scheme certification on the website.

“Certification schemes ensure consultants managing contaminated land have the necessary skills to carry out the work. The EPA currently recognises the following certifications:

- Environment Institute of Australia and New Zealand - Certified Environmental Practitioner (Site Contamination) (CEnvP (SC))”

From the [Contaminated Land Consultant Certification Policy](#): The EPA recognises the CEnvP(SC) certification. The EPA is satisfied that the scheme provides a thorough process for certifying contaminated land consultants to an acceptable minimum standard of competency.

7-03-2013 [Schedule 2 of the State Environmental Planning Policy \(Three Ports\) 2014](#)

In this policy, a suitably qualified person is mentioned in Schedule 2; it points to [Schedule B9](#) published by the National Environment Protection Council, which outlines that consultants should be members of one or more relevant professional societies

“A suitably qualified person means a person who has the competencies that are essential to contaminated site assessment and investigation as set out in the document entitled Schedule B9 Guideline on Competencies and Acceptance of Environmental Auditors and Related Professionals published by the National Environment Protection Council in 2013.”

South Australia

01-08-2019 [SA Environment Protection Authority \(EPA\)](#)

The EPA SA is South Australia’s independent environment protection regulator. It administers the Environment Protection Act 1993 and the Radiation Protection and Control Act 1982, as well as developing guidelines and codes of practice. It recognises the CEnvP (SC) on their website.

Tasmania

07-2015 [TAS Environment Protection Authority \(EPA\)](#)

The EPA TAS is Tasmania’s principal environmental regulator. The EPA administers the Environmental Management and Pollution Control Act 1994 and is an integral part of Tasmania’s Resource Management and Planning System. In July 2015, EPA TAS announced requirements regarding the Site Contamination Practitioners Australia (SCP Australia) scheme. [Environmental Institute of Australia and New Zealand submission on Proposed](#)

SCP Australia subsequently merged with EIANZ, to form the scheme known as CEnvP (SC). This is the only certified consultants scheme currently endorsed by EPA Tasmania.

2020 [Environment Management and Pollution Control \(Underground Petroleum Storage Systems\) Regulations 2020: Explanatory Paper](#)

Part 1 - [Defining a suitably qualified person to produce an environmental site assessment and decommissioning assessment report](#)

To ensure that the infrastructure owner receives an assessment report that is to the required standard and is likely to be acceptable to EPA, a clause has been added to the draft Regulations requiring that:

“A person who authors and manages the works and actions required for an environmental site assessment report or decommissioning assessment report, must be a person:

- certified under the Certified Environmental Practitioner Site Contamination (CEnvP SC) scheme (<https://www.cenvp.org/directory/>) or
- any other scheme approved by the Director or
- be an individual approved by the Director.”

This reflects the requirement already contained in the decommissioning guidelines and will ensure the environmental site assessment report is to a similar standard.

Western Australia

04-2017 [Principles to guide schemes for the certification of Environmental Practitioners in Australia and New Zealand](#)

The HEPA National Certification of Environmental Practitioners Working Group was established in 2015 with the task of developing a framework to improve confidence in the quality, reliability and accountability of environmental reports and documentation provided to government agencies by environmental practitioners. The Working Group investigated existing certification schemes and standards in Australia, New Zealand and internationally to identify the most effective criteria and process for certification of environmental practitioners. A set of principles were developed to guide environmental practitioner certification bodies. These principles were endorsed by HEPA in 2017 and are available for download.