



**SUBMISSION ON THE DRAFT NATIONAL POLICY STATEMENT FOR INDIGENOUS  
BIODIVERSITY: MARCH 2020**

## **J Swap Contractors Ltd**

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### **Introduction**

1. The J Swap Contractors Ltd (J Swap) is a family owned company founded in 1937 in the Waikato Region. Today J Swap has multiple businesses involved in quarries, civil construction, transport and stockfeed industries, and employs over 500 people full time.
2. The quarries division has 10 hard rock quarries throughout the Waikato and Bay of Plenty Regions, and ranks as the fourth largest producer of aggregates in New Zealand.
3. Quarries are a significant contributor to the economic growth and development of communities. Projections indicate that the population of New Zealand could grow as high as between 5.3 and 7.9 million by 2068. To meet the needs of this growing population we will require more housing and expanded infrastructure.
4. We need to make sure we have the aggregate (crushed rock and stone) required to build the foundations of our houses, roads and infrastructure, to provide for a low carbon economy. J Swap quarries have a critical role to play in supplying materials to build this future.

5. For the development and use of quarry sites, resource consents (authorisation) has been required under the Resource Management Act (RMA) since its enactment 29 years ago. These consent processes have required us to take into account and address biodiversity effects as a part of proposals. This has included professional ecological assessment and ongoing monitoring of the activity during operation. In effect, addressing potential biodiversity impacts by our businesses is nothing new.
6. As such J Swap welcomes the opportunity to submit on the draft National Policy Statement for Indigenous Biodiversity, in the interests of improving the NPS-IB text to meet its Objectives.
7. Within the draft NPS-IB a significant amount of detail is present. In order to convey the key message of J Swap's submission, emphasis has been placed in ***bold italics*** where this applies.

## Analysis – Key Points

### Ensure access for quarrying to the Effects Management Hierarchy

8. The NPS-IB is supported, as are the Objectives listed in it, in particular, Objective 6, as it relates to economic wellbeing, and the role of landowners and land users in managing and protecting biodiversity.
9. J Swap already manage adverse effects on biodiversity at sites via the resource consent process and subsequent conditions on resource consents. The regulatory approvals system has had to take biodiversity into account for decades already, particularly in comparison to other primary industries.
10. Part 3.9 of the NPS-IB provides for this approach to continue, by allowing “mineral and aggregate extraction” to access the “effects management hierarchy (EMH)”. This is consistent with Policy 8, which recognises the locational constraints applying to quarrying and other specified activities (variability of suitable source rock types). It is also consistent with the Government's [Minerals and Petroleum Resources Strategy for Aotearoa New Zealand 2019-2029](#), which further recognises the importance of aggregates, and of their proximity to markets, for the economy and wider society (concrete, roads and infrastructure).
11. We note that ***Part 3.9 does not operate as intended*** because, in practice, ***Appendix 1 will see close to all biodiversity in New Zealand classified as significant***, and ***Appendix 2 will see close to all of that classified as “high value”***. In such cases, quarries would have to ***avoid*** a wide range of effects on nearly all biodiversity, ***meaning a quarry could not occur***.
12. In evidence, all of the biodiversity in which J Swap works will present one or more of the following possibilities, and this will be evident to non-experts and practising ecologists alike:
  - Commonplace indigenous vegetation;

- Seral forest, or regenerating forest;
- Vegetation with ecological gradients;
- At-risk species, such as pipits, and longfin eels;
- “Indigenous vegetation that has been reduced to less than 30 per cent of its former extent in the ecological district, region or land environment”, or less than 20 per cent.

13. **CASE STUDY:** At J Swap’s largest quarry in the Waikato, replacement resource consents are currently being sought. A significant volume of soil and weathered rock is required to be removed in order to access strong rock that passes tests for use. This material (overburden) needs to be placed somewhere. The only suitable choices of locations are grazed (farmed) gullies. Some of these gullies have interdispersed wet pasture and farm drains/streams at the bottom, which would be impacted on as a result of a disposal site. The wet pasture is classified as potentially being (in part) degraded wetland. The streams are classified as having aquatic biodiversity value.

Under the current RMA system we have been able to modify our proposal to avoid impacts on some of these areas. Where unable to avoid, with professional ecological advice, we have been able to generate a significant offset package, designed to be implemented on site well before any impacts occur.

However, under the proposed NPS-IB, Appendix 1 at plain reading, would highly likely determine the interdispersed degraded wetlands as “Significant” due to the fact that wetlands in the wider Waikato Region are underrepresented (Appendix 1, (2)(c) – “rarity”).

If being classified as “Significant”, this means that the quarry will have to avoid all effects in this space. If so, then the quarry cannot use these spaces for placement, and our quarry operation cannot continue.

14. **As a solution**, if the assessment of a site identified biodiversity effects, then it is ***fair and reasonable that an opportunity be afforded to the quarry to not only avoid, but remedy, mitigate, offset and compensate for effects via the EMH***, if it is appropriate to do so. Having to outright ***avoid*** effects, means both a quarry and biodiversity cannot co-exist. It is simply, one or the other.

## Recommendations

- a) Review Appendix 1, and develop fit-for-purpose criteria for determining significance to ensure that actual significant biodiversity is captured, not just capturing all or ‘regular’ biodiversity;
- b) Delete Appendix 2, as there is little or no meaningful distinction made between high value and medium value;
- c) Delete Part 3.9 (2) (a) to allow mineral and aggregate extraction to access the effects management hierarchy for all quarry proposals, whether indigenous biodiversity is significant or not (3.9 (2) (d) (ii).

## Mapping significant biodiversity

15. Councils ***should be required to identify, map and schedule Significant Natural Areas to provide context in districts and regions*** for managing and protecting biodiversity, and for project proponents when applying for resource consent for their activities, at sites, among other reasons.
16. It is noted, however, that the time and resourcing burden for many councils around New Zealand will be considerable, if not insurmountable, even with extra central government support. That is also because all mapping will need to be ground-truthed for accuracy. It is not good enough for councils to carry out this task solely as a desktop study.
17. Under the current analysis framework, one problem is that if almost all biodiversity will meet a classification of significant under the current Appendix 1, then almost all of New Zealand will have to be mapped as SNAs. This defeats the concept of significant, which, logically, ought to apply only to some fraction of biodiversity.
18. **CASE STUDY:** J Swap's third largest quarry is located on one bank of the Waikato River. Previously in 2013, the South Waikato District Council reviewed the District Plan to include Significant Natural Areas (SNAs). Notices were sent to parties that may be affected, with maps drawn up, defining SNAs based on desk top analysis (aerial photos).
19. This analysis identified vegetation within the quarry site as being significant. The areas mapped included weeds such as gorse, pampas and other pest species. We requested ground truthing and were granted it. ***An estimated 30% of the desk top mapped vegetation was ultimately removed from the SNAs. The only way the SNA accurately reflected that which was considered significant, was through ground truthing.*** It is likely that a high degree of error with incorrect classifications will occur again if ground truthing does not occur.

## Recommendations

- d) Uphold Policy 6 and Part 3.8 in terms of councils identifying, mapping and scheduling SNAs, and impose mandatory ground-truthing of all mapping;

## Effects management hierarchy (EMH)

20. The **effects management hierarchy, as defined, is strongly supported** as the ***appropriate approach for considering mineral and aggregate extraction in all areas, classified as significant or otherwise.*** That extends to Appendices 3 and 4, on biodiversity offsets and compensation, respectively. Having ***the options of offsetting and compensation available and framed at a national level is a huge leap forward, if done correctly.***
21. J Swap supports the approach within Principle 1 to provide for offsetting only after exhausting other options, and therefore addressing residual impacts.

22. J Swap is concerned that Principle 2 on limits to offsetting or compensation is too detailed in expression. Specifically, it is not clear what is meant by “socially acceptable”. The NPS-IB when operative will be socially acceptable, as will the resource consent process. Therefore, project proponents should be able to propose offsets / compensation. There will be instances where biodiversity is of such a value that it cannot be offset or compensated for, e.g. because it is irreplaceable.
23. We note a conflict between Principle 5 on “like-for-like”, and Principle 9 on “trading up”. These are two different approaches with conflicting requirements in each. This looks like a drafting error, and needs to be resolved.
24. Principle 9 has a restriction for development in species which are “at-risk’. Where species are at risk, a blanket ban does not allow for the possibility that, for example, higher quality habitat can be provided for associated with a quarry development. If an at risk species with appropriate offsetting and compensation can be considered under the EMH, such positive outcomes should be provided for.
25. For Principle 9 it is important to acknowledge that currently a large gap in the amount of data available is present for an innumerable number of species. As worded such a ban, could act as a proxy to veto a quarry development under this provision.
26. Mātauranga Māori, as characterised in Principle 21, implies that this is science, which differs from the definition, and other text in the NPS-IB. This needs clarification.

## Recommendations

- e. Note J Swap’s support for the **effects management hierarchy**, and our view that **all mineral and aggregate extraction projects** are amenable to being **considered under this framework**;
- f. Shorten Principle 2 of Appendix 3 and of Appendix 4 to remove detail, and, in particular, to remove the vague, and inappropriately used term, “socially acceptable”;
- g. Resolve the conflict between Principle 5 (like-for-like swaps) and Principle 9 (trading up), to allow consideration of both approaches, as appropriate;
- h. **Delete from Principle 9 the terms, “at-risk” and “data deficient” to allow trade-ups in practice**;
- i. Define “mātauranga Māori” to mean the same thing everywhere in the NPS-IB, for clarity;

## Other concerns

27. The problem definition in the Explanatory Note to the NPS-IB is incorrect. The scientific evidence is that the greatest threats to indigenous biodiversity in New Zealand today are exotic animal pests and weeds. In terms of the Government’s

concern that land clearance is a threat to biodiversity, the resource consent process should address this problem, e.g. when applying the effects management hierarchy.

28. The precautionary approach (Policy 2, Part 3.6) – as worded in **Principle 15 of the Rio Declaration** - could lead to councils preventing all land use and economic development in New Zealand. This is because it is always possible to gain more information about biodiversity, to be more certain about it.
29. The fundamental concept, “maintenance of indigenous biodiversity”, relies too heavily on quantitative measures, which could in practice be impossible to implement. For example, populations of insect species fluctuate wildly from year to year, in response to natural causes.
30. In the section, “adverse effects on indigenous biodiversity”, under fundamental concepts, the phrase “degradation of mauri” is not defined or explained. At issue is that this could mean almost anything, and will mean different things to different people. Clarity is required.
31. The existing activities provisions, in particular, Part 3.12, fail to recognise and provide for the nature of quarrying. This is that the quarry footprint, over time, is subject to changes in activities, e.g. from extraction to site rehabilitation. This is a normal part of quarry planning, as is prospecting and exploration for associated and also new aggregate resources. Existing activities need access to the effects management hierarchy, when needed.
32. The NPS-IB, when operative, will be a new national policy statement, and its focus will be biodiversity. On that basis, all biodiversity provisions in all other NPSs, including the New Zealand Coastal Policy Statement, and the NPS for Freshwater Management, should be superseded or replaced by the NPS-IB. This will provide clarity and remove ambiguity.

## Recommendations

- j) **Amend the Explanatory Note** to say that the scientific evidence demonstrates **overwhelmingly that exotic animal pests and weeds are by far the greatest threat to biodiversity in New Zealand**, and the most challenging to manage, in order to state the facts;
- k) **Delete all references to the precautionary approach**, specifically, Policy 2 and Part 3.6, because this **could be used to prevent almost all land use and development in New Zealand**, outside of cities, and because it is unnecessary; in New Zealand; we have the rule of law;
- l) Introduce the concept of quality of biodiversity in the characterisation of “maintenance of indigenous biodiversity”, alongside quantitative measures, for implementation to be tractable in practice;
- m) Define “mauri” and “degradation of mauri” in the section, “adverse effects on indigenous biodiversity”, for clarity, and so that all parties in a resource consent process are empowered to discuss this;

- n) Ensure that existing mineral and aggregate extraction is eligible to access the effects management hierarchy, by **defining “mineral and aggregate extraction” as per “mining” under section 2 of the Crown Minerals Act**, and to **extend that definition to include existing activities**;
- o) **Explicitly state that the NPS-IB supersedes and replaces all provisions concerning biodiversity in all other national policy statements**, and remove all text in the NPS-IB that is inconsistent with this approach, for legal clarity.

## Answers to questions

Questions	Answers
Q1. Do you agree a National Policy Statement for Indigenous Biodiversity (NPS-IB) is needed?	Yes, subject to J Swap's recommendations for improvement and workability.
Q2. The scope of the proposed NPS-IB focuses on the terrestrial environment and the restoration and enhancement of wetlands. Do you think there is a role for the NPS-IB within coastal marine and freshwater environments?	Yes. The NPS-IB must take precedence over all other RMA national instruments in relation to biodiversity, for legal clarity.
Q3. Do you agree with the objectives of the proposed NPS-IB?	Yes. It is important to manage and protect biodiversity.
Q4. Hutia te rito ...	Not answered.
Q5. Does the proposed NPS-IB provide enough information on Hutia te rito ... ?	Ensure that all terms in te reo Maori are clearly and uniquely defined and characterised, for legal clarity.
Q6. Does the NPS-IB appropriately take into account the principles of the Treaty of Waitangi?	Yes, subject to the foregoing.
Q7. What opportunities and challenges do you see for the way in which councils would be able to work with tangata whenua ... ?	Not answered.
Q8. Local authorities will need to consider opportunities for tangata whenua ... customary use.	Not answered.
Q9. What specific information, support or resources would help you implement the provisions in this section?	Not answered.
Q10. Territorial authorities will need to identify, map and schedule Significant Natural Areas (SNAs) in partnership with tangata whenua, landowners and communities. What logistical issues do you see with mapping SNAs, and what has been limiting this mapping from happening?	Time and cost.

Q11. Of the following three options, who should be responsible for identifying and mapping and scheduling of SNAs ... ?	Not answered.
Q12. Do you consider the ecological significance criteria in Appendix 1 of the proposed NPS-IB appropriate for identifying SNAs?	No. Appendix 1 would have all biodiversity in New Zealand classified as significant. That is not logical. The criteria need to be amended.
Q13. Do you agree with the principles and approaches territorial authorities must consider when identifying and mapping SNAs.	Ensure that all identification and mapping of significant biodiversity is ground-truthed for accuracy.
Q14. The NPS-IB proposes SNAs are scheduled ....	Not answered.
Q15. We have proposed a timeframe of five years for the identifying and mapping of SNAs ...	It is suggested that many or most councils will not be able to achieve these timeframes.
Q16. Do you agree with the proposed approach to identifying and managing taonga species and ecosystems?	Not answered.
Q17. Part 3.15 of the proposed NPS-IB requires regional councils and territorial authorities to work together and manage highly-mobile fauna outside of SNAs. Do you agree with this approach?	Not answered.
Q18. What specific information, support or resources would help you implement the provisions in this section?	Not answered.
Q19. Do you think the proposed NPS-IB provides an appropriate level of protection of SNAs?	No. Part 3.9 will prevent almost all activities listed under Part 3.9 (2) from accessing the effects management hierarchy, contrary to the Government's intent.  Adopt all of J Swap's recommendations in our primary submission.
Q20. Do you agree with the use of the effects management hierarchy as proposed to address adverse effects on biodiversity instead of the outcomes-based approach recommended by the Biodiversity Collaborative Group?	Yes. This provides a logical process for project proponents to follow.
Q21. Are there any other adverse effects that should be added to Part 1.7 (4) to be considered within and outside of SNAs?	Provide a clear definition of "degradation of mauri", and an explanation of how this would be measured objectively, and / or how this concept could be discussed between litigating parties, e.g. in the Environment Court.



<p>Q22. Do you agree with the distinction between high and medium-value SNAs as the way to ensure SNAs are protected while providing for new activities?</p>	<p>No. Delete Appendix 2 because it contains very little distinction between high value and medium value. Delete all reference to high value and medium value in the NPS-IB.</p>
<p>Q23. Do you agree with the new activities the NPS-IB provides for, and the parameters within which they are provided for?</p>	<p>Yes. Mineral and aggregate resources are locationally constrained, and are essential activities for society and the economy. This is recognised in the Minerals and Petroleum Resource Strategy 2019-2029.</p> <p>Mineral and aggregate extraction should be defined as per mining under the Crown Minerals Act, and needs to include existing activities.</p> <p>In practice, extractives projects will not be able to access the effects management hierarchy under Part 3.9, contrary to the Government's intent, because almost all biodiversity in New Zealand will be significant, and almost all of this will be of high value, under Appendices 1 and 2.</p> <p>Delete Appendix 2, and amend the criteria for significance in Appendix 1. Refer to all of The Swap Group's recommendations in our primary submission to resolve this problem.</p>
<p>Q24. Do you agree with the proposed definition for nationally-significant infrastructure?</p>	<p>Not answered.</p>
<p>Q25. Do you agree with the proposed approach ... plantation forests?</p>	<p>Not answered.</p>
<p>Q26. Do you agree with managing existing activities and land uses, including pastoral farming, proposed in Part 3.12 of the proposed NPS-IB?</p>	<p>No. Existing mineral and aggregate extraction, by its nature, entails changes in footprint and activities during the life of quarrying and mining. This category needs to be able to access the effects management hierarchy, and be treated under Part 3.9 (2).</p>
<p>Q27. Does the proposed NPS-IB provide the appropriate level of protection for indigenous biodiversity outside SNAs ...</p>	<p>Not answered.</p>
<p>Q28. Do you think it is appropriate to consider both biodiversity offsets and biodiversity compensation (instead of considering them</p>	<p>This is fine.</p>

sequentially) for managing adverse effects on indigenous biodiversity outside of SNAs?	
Q29. Do you think the proposed NPS-IB adequately provides for the development of Māori land?	Not answered.
Q30. Part 3.5 of the proposed NPS-IB requires territorial authorities and regional councils to promote the resilience of indigenous biodiversity to climate change. Do you agree with this provision?	Not answered.
Q31. Do you think the inclusion of the precautionary approach in the proposed NPS-IB is appropriate?	No. Remove all reference to the precautionary approach because this could stop almost all land use and development, contrary to Part 3.7 of the NPS-IB.
Q32. What is your preferred option for managing geothermal ecosystems?	Not answered.
Q33. We consider geothermal ecosystems to include ...	Not answered.
Q34. Do you agree with the framework for biodiversity offsets set out in Appendix 3?	Refer to the Swap Group's recommendations in our primary submission.
Q35. Do you agree with the framework for biodiversity compensation set out in Appendix 4?	As per the above.
Q36. What level of residual adverse effect do you think biodiversity offsets and biodiversity compensation should apply to	<p>a. More than minor residual adverse effects.</p> <p>If residual effects are no more than minor after the first part of the effects management hierarchy has been applied, then the project will be consistent with the purpose of the RMA.</p>
Q37. What specific information, support or resources would help you implement this section?	Not answered.
Q38. The proposed NPS-IB promotes the restoration and enhancement of three priority areas: degraded SNAs; areas that provide important connectivity of buffering functions; and wetlands. Do you agree with these priorities?	<p>No. Each region of New Zealand has its own challenges, so this categorisation is too broad to be effective or fit for purpose.</p> <p>This matter can be dealt with via the NZ Biodiversity Strategy and amendments to Part 3.18 on regional biodiversity strategies to allow a tailored approach for regions and districts.</p>

Q39. Do you see any problems in wetland protection and management being driven through the Government Action for Health Waterways package while wetland restoration occurs through the NPS-IB?	Yes. The NPS-IB must supersede or replace all biodiversity provisions in all other NPSs. This is necessary as a matter of logic and for legal clarity.
Q40. Part 3.17 of the proposed NPS-IB requires regional councils to establish a 10 per cent target for indigenous, urban vegetation ...	Not answered.
Q41. Do you think regional biodiversity strategies should be required under the proposed NPS-IB, or promoted under the New Zealand Biodiversity Strategy?	Use the NZ Biodiversity Strategy. This approach under Part 3.18 should be used as needed, not made compulsory.
Q42. Do you agree with the proposed principles for regional biodiversity strategies set out in Appendix 5 of the proposed NPS-IB?	Not answered.
Q43. Do you think the proposed regional biodiversity strategy has a role in promoting other outcomes (e.g. predator control or preventing the spread of pests and pathogens)?	Not answered.
Q44. Do you agree with the timeframes for initiating and completing the development of a regional biodiversity strategy?	Not answered.
Q45. What specific information, support or resources would help you implement the provisions in this section?	Not answered.
Q46. Do you agree with the requirement for regional councils to develop a monitoring plan ... ?	Not answered.
Q47. Part 4.2 requires the Ministry for the Environment to undertake an effectiveness review ...	Not answered.
Q48. Do you agree with the proposed additional information requirements within Assessments of Environmental Effects ...	Yes, in principle.
Q49. Which option for implementation of the proposed NPS-IB do you prefer?	Not answered.
Q50. Do you agree with the implementation timeframes in the proposed NPS-IB, including the proposed requirement to refresh SNA schedules in plans every two years?	These time frames may well be unachievable for many or most councils around New Zealand.
Q51. Which of the three options for identifying and mapping SNAs on conservation land do you prefer ... ?	a. Territorial authorities identify and map all SNAs including public conservation land.

Q52. What do you think of the proposal for identifying and mapping SNAs on other public land that is not conservation land?	As above.
Q53. Part 3.4 requires local authorities to manage indigenous biodiversity and the effects on it of subdivision, use and development in an integrated way. Do you agree with this provision?	Yes.
Q54. If the proposed NPS-IB is implemented, then two pieces of national direction – the NZCPS and the NPS-IB – would apply in the landward coastal environment. Part 1.6 of the proposed NPS-IB states if there is a conflict between these instruments the NZCPS prevails ...	The NPS-IB should supersede or replace all biodiversity provisions in all other NPSs, for legal clarity.
Q55. The indicative costs and benefits of the proposed NPSIB for landowners, tangata whenua, councils, stakeholders, and central government are set out in Section 32 Report and Cost Benefit Analysis. Do you think these costs and benefits are accurate? Please explain, and please provide examples of costs/benefits if these proposals will affect you or your work.	No. The section 32 report is deficient in failing to provide adequate analysis. It fails to take large areas of New Zealand into consideration, for example. We consider it should be rescinded.
Q56. Do you think the proposed NPSIB should include a provision on use of transferable development rights?	Yes.
Q57. What specific information, support or resources would help you implement the provisions in this section?	Not answered.
Q58. What support in general would you require to implement the proposed NPSIB? Please detail. a. Guidance material b. Technical expertise c. Scientific expertise d. Financial support e. All of above. f. Other (please provide details)	F. Other J Swap seeks the adoption of all of its recommendations in our primary submission.
Q59. Do you think a planning standard is needed to support the consistent implementation of some proposals in the proposed NPSIB? ...	No.
Q60. Do you think there are potential areas of tension or confusion between the proposed NPSIB and other national direction?	Yes. See above answers to questions, and recommendations for improvement.
Q61. Do you think it is useful for RMA plans to address activities that exacerbate the spread of pests and diseases threatening biodiversity, in	Not answered.

conjunction with appropriate national or regional pest plan rules under the Biosecurity Act 1993?	
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