



# SEE NO EVIL: BIODIVERSITY LOSS ON PRIVATE LAND



**Forest  
& Bird**

TE REO O TE TAIAO  
*Giving Nature a Voice*



## EXECUTIVE SUMMARY

**N**ew Zealanders need nature. A healthy, thriving environment is the basis of our economic strength, and human wellbeing. We need nature, but first nature needs us to protect it.

New Zealand is part of a global ecological crisis. **The World Wildlife Fund for Nature Living Planet report 2020** found there has been a 68% average decline of birds, amphibians, mammals, fish, and reptiles since 1970.

Forest & Bird has documented in this report an important part of New Zealand's failure to prevent the rich diversity of life on Earth from being lost.

It shows that nature on private and council owned land is being deliberately destroyed, and that most councils are not able or willing to protect it. This failure of governance and management is allowing large areas of native habitat to be illegally destroyed with impunity.

Using data provided by regional, district and city councils under the Local Government Official Information and Meetings Act (LGOIMA), Forest & Bird has documented huge blind spots, inconsistencies, and ineffectiveness in the country's ability to protect native forest, wetlands, and coastal and river margins.

The findings depict hundreds of instances of damage to native habitat, some of it large scale or of high importance and identified as a Significant Natural Area. This occurs in the context of dozens of local and regional governments with little ability to detect illegal habitat destruction, let alone proactively protect the natural environment for which they are responsible. →

→ It is clear from council responses that in the absence of consistent rules and dedicated resourcing, New Zealand is being robbed of significant places and species with little consequence to the perpetrator. There is simply no guarantee that important habitat will be protected, regardless of its size, importance, rarity, or classification.

A third of councils (25 out of 78) had no record of any confirmed unauthorised vegetation clearance in the last three years, a finding which strongly suggests these councils do not actively monitor vulnerable habitat, and are therefore unaware of any damage to it.

Most other councils rely on the public to report suspicious habitat damage, but email records provided show significant time and resources is wasted in investigating unfounded complaints.

Despite this lack of proactive monitoring from agencies whose job it is to protect the environment, many instances are recorded where large, important, or precious areas of native habitat were harmed or destroyed entirely, with little compliance response forthcoming.

Where councils are aware of damage to the natural environment, many are weak in their ability to protect it, either through inadequate planning rules, lack of staffing resources, or lack of commitment to strong enforcement action.

It is clear that in the absence of consistent national direction, policy, and resourcing that puts nature first, significant places and species are being irreversibly harmed with little consequence to the perpetrator.





# BACKGROUND

## WITNESS TO LOSS

As New Zealand's largest, independent environmental NGO with expert staff and close to 50 volunteer branches around the country, Forest & Bird is uniquely placed to observe patterns of environmental management and mis-management over time, and place.

Forest & Bird has been witness to, and in many cases closely involved in stopping, instances of deliberate habitat destruction around the country. We suspected that recent instances known to Forest & Bird staff and members were not isolated cases, but were being repeated across New Zealand and were going under the radar of public awareness. We wanted to find out more.

Often the most egregious, large-scale instances of illegal habitat destruction achieve some news coverage, and from there into public and political consciousness, but this report shows that innumerable other instances are never noticed, while many that do come to light do not trigger a compliance response.

While habitat continues to be deliberately destroyed on private and council land with impunity, New Zealand's unique natural environment slides ever closer to collapse.

## 4000 NATIVE SPECIES IN TROUBLE

Almost 4000 of our known native species are threatened with extinction. Many of these species are well known 'charismatic' animals including kiwi, hector and māui dolphins, kākāpo, and hoiho/yellow-eyed penguin. Other species are equally or more endangered, but are unknown to the majority of New Zealanders. They include plants, insects, fungi, and mosses, and even birds. Some of these species **are largely restricted to private land**, or on land that is not well protected. The extinction risk has worsened for 86 native species in the past 15 years – compared with the conservation status of just 26 species improving in the past 10 years.

It is therefore critical that nature on private or weakly protected land is well looked after to protect the biodiversity and natural values that underpin human and ecological wellbeing. →



## HABITAT IN HARM'S WAY

Nature on land in New Zealand is in trouble. As well as individual species, entire habitats are at risk of extinction. Manaaki Whenua Land Care research, highlighted by Forest & Bird earlier this year, showed that **12 out of 13 native habitat types shrunk between 2012 and 2018**. Almost **two-thirds of our rare ecosystems** are threatened with collapse.

About 14m hectares of **indigenous vegetation remains in New Zealand**, with about 8.2m hectares legally protected. Without strong, well understood, and consistent compliance policies and resources, the rest remains vulnerable to degradation.

This report details the on-the-ground experience which allows continual illegal habitat destruction to go unnoticed and often unpunished by the agencies responsible for looking after the land-based environment.

## COUNCIL OBLIGATIONS UNDER THE LGOIMA

The **Local Government Official Information and Meetings Act** is similar to the Official Information Act. It is a law intended to give New Zealanders better access to official information, aimed at local authorities.

The OIA and LGOIMA state that the department, Minister, or local authority should respond '*as soon as reasonably practicable*'. They must let the respondent know their decision on the request within 20 working days from receiving it.

Despite their statutory obligations, 11 councils didn't respond or provided inadequate responses to Forest & Bird's LGOIMA request.

## FOREST & BIRD'S QUESTION TO COUNCILS

Using the Local Government Official Information and Meeting Act, Forest & Bird asked all 78 district, city, and regional councils the following information:

For each year for the last 3 years

- The number of incidents of unauthorised vegetation clearance reported to the council, either through monitoring, or otherwise logged by the council.
- The type of vegetation cleared.
- Number of hectares known or estimated to be involved in each incident.
- The compliance response to each incidence.

## THE RESOURCE MANAGEMENT ACT (RMA)

The RMA sets out councils' statutory responsibilities including, as a matter of national importance, protecting significant indigenous vegetation and significant habitats and maintaining biodiversity.

## REGIONAL AND DISTRICT COUNCIL ROLES

Regional councils and district councils are responsible for protecting the privately owned land, riparian areas, and coastal environment in their region. Generally, regional councils are responsible for estuarine environments and wetlands (and other freshwater), while district (or city) councils are responsible for terrestrial vegetation.



# THE FINDINGS

## ARE COUNCILS LOOKING TO PROTECT THE ENVIRONMENT?

*Note on numbers: The council responses were not standardised, and subjective decisions had to be made on how to categorise them in some instances. Because of this, this report focuses on trends and patterns, rather than absolute numbers.*

It is clear that most councils are not equipped to protect native habitat, or to uphold the law. Most councils have no staff dedicated to monitoring at-risk habitat on private land beyond when checking consents for other activities.

Instead, most illegal vegetation clearance is reported by non-expert members of the public. While councils rely on these complaints, email records provided show significant council time and resources is wasted in investigating unfounded complaints from the public.

- Twenty-five councils recorded no instances of known illegal vegetation clearance in the last three years. This is nearly a third of New Zealand's territorial and regional authorities. →

→ Forest & Bird considers it to be implausible there was no instance of illegal vegetation clearance for three years in these districts and regions. Instead, it is vastly more likely that these councils are simply not actively looking to protect vulnerable habitat, and therefore are unaware of any damage caused. This is a worrying situation of illegal activity being out of sight, and therefore out of mind.

- A further 33 councils recorded between 1 and 10 instances of illegal vegetation clearance in their jurisdiction, over three years.
- Eight councils recorded between 10 and 21 instances.
- A single council recorded 40 instances across three years.
- Auckland Council recorded 1099 reports of vegetation clearance, but was unable to determine if these were confirmed or not, or what the compliance response was. Because of these significant uncertainties, their data has been excluded from this report.

#### **Hawkes Bay District Council:**

● *...our monitoring responsibility under the RMA is slowly establishing, due to lack of resources, and that there are no applications from property owners for consent to remove indigenous vegetation on Council's records... The recent district wide assessment of indigenous vegetation we have completed as part of the District Plan review, and the new suite of rules proposed for the District Plan related to these areas, should provide more robust data moving forward.* ●

#### **Hastings District Council:**

● *In the last 3 years Hastings District Council has never received any complaints or anything close to resembling what you have requested in regards to unauthorised vegetation clearance.* ●

### **WHAT COMPLIANCE ACTION DID COUNCILS TAKE?**

It is clear that despite the very small number of instances that ever come to the attention of regional and district councils many cases are not investigated, or acted on.

Where there was a compliance response, it is more likely to involve education, at the weakest end of a non-statutory response, or an abatement notice at the weak end of formal enforcement.

Given the serious nature of many instances of habitat damage investigated by councils, the overall compliance response is clearly inadequate for the purposes of holding perpetrators to account, or to act as a deterrent to others.

- In total, there were 278 instances of unauthorised vegetation damage recorded in total, for all councils over three years, to date.
- Of these instances, 223 related to native vegetation, including wetlands, native bush, mangrove forests and coastal areas, and river margins. →

→ This is almost certainly the very tip of the iceberg, given very few of the councils appear to actively resource monitoring of native vegetation. Instead, most instances were reported by members of the public, or observed opportunistically by council staff when checking on consented activities.

None or unknown response		
None	Unknown	Under investigation
63	51	19

Non-regulatory response		
Education	Retrospective consent	Remediation
28	8	24

Formal enforcement			
Abatement/warning	Infringement notice	Enforcement order	Prosecution
43	22	9	7 native habitat
			9 exotic forest

- Approximately 63 (23%) incidents had no compliance response at all, and for a further 51 (18%) the response was unspecified. This means over 40% of all confirmed incidents of vegetation clearance may have had no compliance response at all.
- In three years, there were 7 prosecutions relating to native vegetation or wetlands, either complete or before the courts.
- There were approximately 90 formal enforcement actions relating to native vegetation, wetlands, or native habitat. Because many incidents received more than one formal response, this number is much higher than the number of actual incidents that triggered enforcement action.
- Non-statutory responses such as remediation, retrospective consents, and education made up 60 of the responses.

### **SIGNIFICANT NATURAL AREAS, AND IMPORTANT HABITAT**

It is clear from council responses that in the absence of consistent rules and dedicated resourcing, New Zealand is losing significant places and species with little consequence to the perpetrator. There is simply no guarantee that important habitat will be protected, regardless of its size, importance, rarity, or classification.

New Zealand's regions contain numerous natural areas that contain threatened species or rare types of habitat which make them environmentally important. These areas are called significant natural areas (SNAs) and often occur on private land. SNAs are an integral part of New Zealand's natural heritage and provide a range of benefits to humans and to other living things. How these areas are identified and protected is not consistent across councils. The government recently sought feedback on a draft National Policy Statement on Indigenous Biodiversity, which would require councils to identify and protect SNAs with consistent criteria. →



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- The Thames Coromandel District Council explained to a member of the public concerned about activity in an SNA that “the TCDC District Plan does not consider SNA requiring special treatment or protection.”
  - In one recorded instance in Waipā district, 103ha of an SNA was sprayed by plane, for which the perpetrators received an abatement notice and two formal warnings.
  - In an instance in the Kaipara area, investigating officers decided there wasn’t enough evidence to do more than provide education after the land owner denied involvement in damaging an Outstanding Natural Landscape.
  - Taupō District Council issued an abatement notice against a landowner who destroyed an area of Nationally Endangered geothermal kānuka, which appeared to be specifically identified for protection in an activity consent notice.

### **INCONSISTENCIES AND DISCREPANCIES BETWEEN AND WITHIN COUNCILS**

Council responses show that there are significant and worrying discrepancies between how councils respond to illegal habitat destruction. An instance of vegetation clearance that may go to court in one area may receive a simple warning from council officers in another.

- For example, an illegal dam in Waikato that flooded 24ha of wetland was only required to be ‘remediated’, according to Waipā Council, whereas Horizons Regional Council prosecuted someone for partially draining 10ha of coastal wetland.
- Dunedin City Council is seeking formal enforcement action through the Environment Court for clearance of 0.1ha of native regenerating bush, while in comparison Taupō District Council issued an abatement notice against a landowner who destroyed an area of Nationally Endangered geothermal kānuka.

There are also inconsistent responses within the same councils.

Where Environment Canterbury prosecuted a farmer for causing the ‘total destruction’ of a 24ha wetland by aurally sprayed with herbicide and digging a 5.5km network of drainage channels, they apparently failed to even check on two other instances of reported wetland destruction.

- One report of clearance and development of wetlands (and the removal of wetland vegetation) at Flock Hill station stated that “The works have mainly removed large areas of native terrestrial vegetation, cultivation and pasture development’. But Environment Canterbury’s records show the site has not yet been visited, despite being the incident being reported in Jan 2020.
- Another instance at Bush Gully Stream wetland in Canterbury involving “large scale spray-off of native bush and potential super phosphate and grass seeding via helicopter”, including “spraying across waterways in an erosion and sediment risk zone”. The enquiry was noted as being “closed without being progressed”.

**EXAMPLES OF NON-COMPLIANCE AND COUNCIL RESPONSES  
(SEE FULL COUNCIL RESPONSES HERE)**

<b>Council</b>	<b>Notes from incident reports</b>	<b>Notes on compliance response</b>
<b>Ashburton District Council</b>	100ha of native grassland	Abatement note and remedial work.
	Several ks of roadside matagouri clearance.	Remediation.
	100ha of matagouri regrowth cleared. Previously farmed area.	Permission given by LINZ and FENZ, contingent on permission from Ashburton District Council, which was not sought. Advisory letter about district plans matters sent to properties in the area.
<b>Auckland Council</b>	1099 reported incidents. Not clear if these are confirmed or unconfirmed.	Compliance response not provided.
<b>Christchurch City Council</b>	Kanuka forest - 5.7ha Coprosma shrubland and mixed scrub - 2.08ha Narrow-leaved snow tussockland - 0.05ha Narrow-leaved snow tussockland and Coprosma Dumosa - 0.15 ha	Investigation identified that some of the spraying was a permitted activity, but not all. Outcome was an agreement on mitigation measures, including fencing off to allow for natural regeneration and covenanting of some areas.
	Threatened indigenous plant species. Indigenous coastal vegetation defined as: Coastal shrubland communities; Scattered (low density) indigenous tussock, shrubs, rushes, vines, herbs, grasses and mosses among predominantly exotic grasslands, and cushionfields, mossfields and stonefields on Kaitorete Spit.	Council has joined as a party to enforcement order proceedings currently before the Environment Court.



<p><b>Environment Canterbury</b></p>	<p>Clearance and development of wetlands (and the removal of wetland vegetation) on Flock Hill Stations. The works have mainly removed large areas of native terrestrial vegetation, cultivation and pasture development, which have been reported to Selwyn District Council compliance team as well. SDC and ECan will work together to investigate this clearance and talk to the landowners and inform them of their responsibilities in regards to wetlands and native terrestrial vegetation on their properties.</p>	<p>Unable to respond in a timely manner, given lockdown and lack of assistance from SDC who had agreed to collaborate, but then withdrew at last minute.</p>
	<p>Site visit at Bush gully stream wetland and noticed large scale spray-off of native bush and potential super phosphate and grass seeding via helicopter (assumed no proof) See pictures. Large amounts of sediment coming down the stream from this bush catchment. (just waiting to hear if RMO has taken a photo of the sediment wash out event) Spraying across waterways in an erosion and sediment risk zone - might need to get SDC involved regarding vegetation clearance</p>	<p>Closed as investigation not progressed by another officer.</p>
	<p>ECan staff member reported 24ha of wetland has been aerially sprayed with herbicide and a 5.5km network of drainage channels has been dug. It appears that this has caused the total destruction of the wetland. Location is *** the North Opuha River, across from the **** ski field access road.</p>	<p>Prosecution.</p>
	<p>ECan staff member reported: Extensive development and cultivation has recently occurred on * Station. From comparing aerial photographs it appears that some of this has occurred in wetlands, in breach of Environment Canterbury's rules. This will have destroyed the wetlands. It is also possible that Mackenzie District Council vegetation clearance rules may have been breached.</p>	<p>Three abatement notices from ECAN. No response from Mackenzie District Council.</p>
<p><b>Horizons Regional Council</b></p>	<p>Coastal dune lake/wetland partially drained - 10ha, Rakau Hamama Lagoon</p>	<p>Prosecution of ***who carried out the partial draining of the wetland.</p>
	<p>15ha Kanuka scrub - sprayed without consent</p>	<p>Abatement Notice issued to cease vegetation clearance without a resource consent.</p>



<b>Kaipara District Council</b>	Outstanding Natural Landscape in Mangawhai. The type of vegetation that was cleared was Manuka and Kanuka and a large Mamaku tree fern that was also uprooted. Less than 1 hectare was involved.	None. Education provided to new owners.
<b>Mackenzie District Council</b>	169ha of dryland ecosystem clearance at Maryburn Station that resulted in retrospective land use consent being sought for the clearance of indigenous vegetation, by spraying (RM 170104) and retrospective land use consent for the installation of two pivot irrigators, identified as Pivots 3 & 4 (part of RM 170147).	Decline of Resource Consent applications.
<b>Marlborough District Council</b>	4ha of native vegetation cleared.	Agreement to remediate the land.
	11ha of matagouri and lacebark cleared.	Owner working with Council re restoration/remediation work rather than pursue any enforcement action.
<b>New Plymouth District Council</b>	Trees and scrub associated with a newly identified Significant Natural Area in the Proposed New Plymouth District Plan and conservation covenant. Less than 1ha.	General enforcement – Advise applicant to cease and why. Further information about Proposed District Plan rules provided to land owner.
<b>Northland Regional Council</b>	Moderate damage in a potentially significant wetland. Excavation work @ Mangakahia Rd, Awaroa.	Remedial work undertaken, land management advisor to assist.
<b>Otago Regional Council</b>	Disturbance of regionally significant wetland.	Currently subject to an enforcement process.
<b>Taupō District Council</b>	Clearance of vegetation protected by consent notice, including Nationally Endangered geothermal kānuka.	Abatement notice. See ecological report provided.
<b>Thames Coromandel District Council</b>	Complaint not substantiated.	“Complainant was concerned re the area being a SNA. Explained that the TCDC District Plan does not consider SNA requiring special treatment or protection.”
<b>Timaru District Council</b>	Investigation into significant SNA known as Hudson property.	Investigation ongoing. Ecological report available soon.



<b>Waikato Regional Council</b>	<p>Large scale mangrove removal while contractor was out doing inspections. Estimates about 100m<sup>2</sup> of mangroves has been removed.</p> <p>She also noted that there are digger tracks and detectable diesel leakage as well, removal has clearly been done by machinery.</p>	<p>Enquiries establish that *** had arranged works to be completed by (local contractor) in order to be able to moor his vessel at the jetty. Formal Warnings to ***. Change to consent to be applied for by *** with assistance from ***</p>
	<p>Information provided by consultant working for WRC in Whangamata as part of monitoring reports male in 'Area E' - access of Hetherington Road removing mature mangroves by hand. Still on site at 11.00am when she left the area. Has photos and can provide a map of area.</p>	<p>Compliance response not recorded.</p>
	<p>103 hectares of vegetation in an SNA sprayed at approximately 821 Waituna Road (opposite the quarry). Landowner: No consent. Matter became a formal investigation. Waipā DC also involved as they have jurisdiction over SNA.</p>	<p>At conclusion 2 x formal warning issued under Section 9 RMA for an individual and company. This related to vegetation clearance and a breach of the discretionary rule 5.1.4.15 (disturbance, roading, tracking, vegetation clearance, riparian vegetation clearance in high risk erosion areas).</p>
<b>Waipā District Council</b>	<p>Aerial spray operation Waikoha area. 103ha of regenerating forest in an SNA.</p>	<p>Abatement notice.</p>
	<p>Unauthorised dam construction Pirongia area. Flooded 24ha of wetland.</p>	<p>Remediation.</p>
<b>Whangarei District Council</b>	<p>4290m<sup>2</sup> of indigenous vegetation had been cleared.</p>	<p>A retrospective Land Use Resource Consent was applied for and granted. Council imposed conditions on the resource consent requiring the property owner to fence the area, submit a Plant Pest Management plan; Animal pest control plan and Ecological Restoration Planting plan to be approved by council, then be implemented. Monitoring of this property is ongoing.</p>

# RECOMMENDATIONS

The Resource Management Act 1991, which provides councils with their regulatory role with respect to indigenous biodiversity, was recently the subject of a comprehensive review lead by retired Court of Appeal judge Tony Randerson, which released its report on July 2020.

It is hard to argue with the report's conclusion that "weak compliance, monitoring and enforcement (CME) across the resource management system has undermined rules in plans that protect the environment. Problems with CME are rooted in both statutory provisions and institutional arrangements". Council's performance in managing biodiversity highlights the problems.

Forest & Bird supports the recommendations of the Randerson Report and calls on all political parties to commit to fully implementing them.

Forest & Bird also calls on all political parties to commit to implementing the National Policy Statement on Indigenous Biodiversity, which has already been the subject of a public consultation process.



## **RECOMMENDATIONS OF THE RANDERSON REPORT - COMPLIANCE, MONITORING AND ENFORCEMENT**

- 1** System links should be established between compliance monitoring, state of the environment monitoring and monitoring progress towards outcomes.
- 2** New regional hubs should be established to undertake resource management compliance, monitoring and enforcement options.
- 3** The offence and penalties regime should be strengthened, including by:
  - increasing the maximum financial penalties
  - deterring offending by extending the circumstances in which commercial gain may be taken into account in sentencing
  - adjusting the maximum imprisonment term so most prosecutions may be heard as judge-alone trials
  - prohibiting insurance for fines and infringement fees under the Natural and Built Environments Act
  - enabling creative sentencing options
  - developing new Solicitor-General prosecution guidelines for environmental cases.
- 4** A number of new compliance, monitoring and enforcement measures should be introduced and existing measures improved, including by:
  - enabling regulators to recover costs associated with permitted activity and unauthorised activity monitoring
  - amending the power to require disclosure of information about those carrying out the allegedly contravening activity
  - creating a new offence for contravention of a condition of consent
  - enabling abatement notices for the contravention of a consent notice, or any covenant imposed by condition of consent
  - establishing a new power to allow a regulator to apply for a consent revocation order in response to serious or repeated non-compliance
  - providing for enforceable undertakings.

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