

Proposed National Environmental Standard for Plantation Forestry

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INTRODUCTION

The Government has recently released a proposed National Environmental Standard for plantation forestry (the NES). This is a milestone event for the forestry sector that will have a significant impact on how forestry activities are regulated throughout New Zealand.

Submission on the NES closed on 18 October 2010, with a large number of submissions being made from a range of interested parties, including local authorities and various participants in the forestry industry. The Minister is currently considering these submissions to determine whether the NES will proceed and what form it will take.

In broad terms, the NES is a form of national guidance that is intended to provide a consistent set of rules that govern how plantation forestry activities occur throughout New Zealand. This paper discusses the objective of the NES, how it will work in practice, and whether it will provide an overall benefit for the forestry sector.

WHAT IS THE PROBLEM?

Forestry activities throughout New Zealand are currently managed under the framework of the Resource Management Act 1991 (the RMA). This involves a myriad of different plans at the district and regional level containing rules that govern when, where, and how forestry activities can occur.

Under the RMA, there is a 'hierarchy' of different planning documents, as illustrated in Figure 1. At the top of the pyramid are national instruments in the form of National Policy Statements and National Environmental Standards. Everything underneath this capstone, including regional and district plans and policy statements, must be consistent with these national documents.

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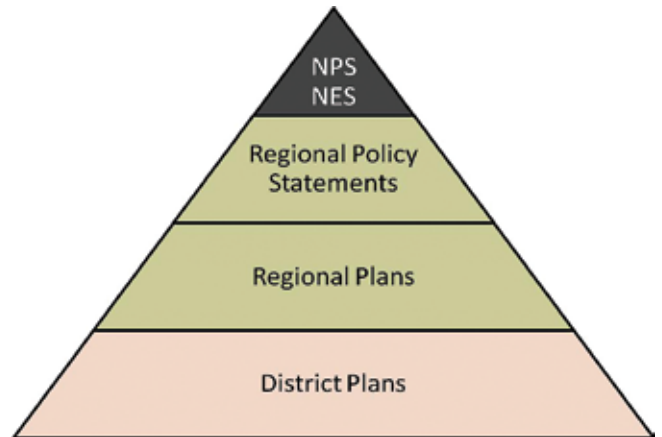


Figure 1: RMA Hierarchy

When the RMA was first introduced, it was always intended that there would be a range of these different national instruments used to provide clear guidance and consistent regulation throughout New Zealand. Unfortunately, this has not occurred and instead each local authority has developed different controls for regulating activities within its region or district.

The outcome of this practice is a patchwork of inconsistent regulation throughout the country that drains resources and creates uncertainty for the forestry sector. In particular, the current approach has resulted in:

- (a) Re-litigation of the same issues across the country;
- (b) Inconsistent treatment of forestry operations;
- (c) Operational inefficiency; and
- (d) Investment uncertainty.

Overall, the current regulatory framework creates a barrier to forestry development and impedes investment in a sector that creates many economic and environmental benefits for New Zealand.

WHAT IS THE SOLUTION?

The Government has recognised that plantation forestry is important to New Zealand due to its significant contribution to our economy and the integral part it plays in New Zealand's efforts against climate change¹. However, these benefits are not being maximised under the current regulatory framework.

The Government has therefore taken active steps to address the current problems. The overall intention was

¹ Refer media statement from Hon Nick Smith, Minister for the Environment, dated 3 September 2010.

clearly signalled by Hon Nick Smith, Minister for the Environment, when he stated:

“Forestry is a long-term investment of up to 30 years requiring certainty and consistency. We want to get a simpler resource management framework in place with clear environmental rules so as to encourage growth and investment.”²

The proposed mechanism to achieve this goal is the NES, which is intended to fill the gap that currently exists at the national level and provide a consistent set of rules and standards for plantation forestry activities.

In broad terms, the objective of the NES is to achieve a more consistent and appropriate framework for the management of plantation forestry. It is not intended to significantly tighten or loosen the management of forestry overall, but to achieve a balanced and consistent approach that provides increased certainty and efficiency for those involved with plantation forestry activities.

HOW WILL THE NES WORK?

The NES will provide a set of rules that determine whether or not resource consent is required for plantation forestry activities. These rules will generally override any existing rules in district and regional plans. The intention is that key forestry activities will be allowed to occur as permitted activities (i.e. no consent required) provided that a range of conditions are met.

Although the NES is intended to improve consistency, it will not be a ‘one stop shop’. Some additional rules will still exist outside the NES as:

- (a) not all forestry activities are covered by the NES; and
- (b) there are a range of matters where territorial and regional authorities can be more stringent regarding certain ‘local’ issues.

In relation to the range of activities covered by the NES, Table 1 provides a summary of the forestry activities that are included or excluded from the NES. The activities that are not covered by the NES will continue to be managed under the existing plan rules within each region and district.

In addition to the above, there are a range of matters where the local authority can be more stringent. This means they are able to either³:

- (a) impose more stringent rules in plans, or more stringent conditions on resource consents; and/or
- (b) in relation to permitted activities, specify conditions in plans that relate to effects not dealt with in the NES.

Table 1: Activities covered by the NES

Activities covered	Activities not covered
Afforestation	Agrichemical use
Re-planting	Burning
Mechanical land preparation	Gravel extraction from beds of rivers
Harvesting	Milling activities and processing of timber
Pruning and thinning to waste	Use and development of land that has the potential to be affected by contaminants in soil
Earthworks	
Forestry related quarrying	
River crossings	

The NES recognises that there are some instances where different rules may be warranted because of different receiving environments or specific local circumstances exist. In such cases, a “one rule fits all” approach will not be appropriate and local management of areas sensitive to the effects of plantation forestry needs to be retained. Many of these aspects relate to overlay areas (e.g. significant natural areas or outstanding landscapes), which are already provided for within district and/or regional plans.

Where councils apply more stringent rules, the overall status for the activity may change. This is illustrated in Figure 2, which outlines a two step process for determining the activity status of a replanting proposal and whether resource consent is required. (See Figure 2 over page)

WHAT IS THE IMPACT?

There are currently 17 regional or unitary authorities and 74 territorial councils within New Zealand. Each council seeks to control plantation forestry in different ways and issues resource consents containing different consent conditions. However, in broad terms, the intent and purpose of these plan rules and consent conditions is the same: to manage adverse effects on the environment resulting from plantation forestry activities.

The impact of the NES will vary between districts and regions depending upon the existing level of RMA regulation of plantation forestry activities. This is illustrated in diagrammatic form by Figure 3 on the next page.

In summary, the NES will reduce RMA regulation in some parts of the country whilst in others, where forestry activities are currently permitted, there will be some increase in regulatory control. Consequently, there will be some “unders” and “overs” resulting from the NES.

² *Supra*

³ Refer MFE discussion document at page 41.

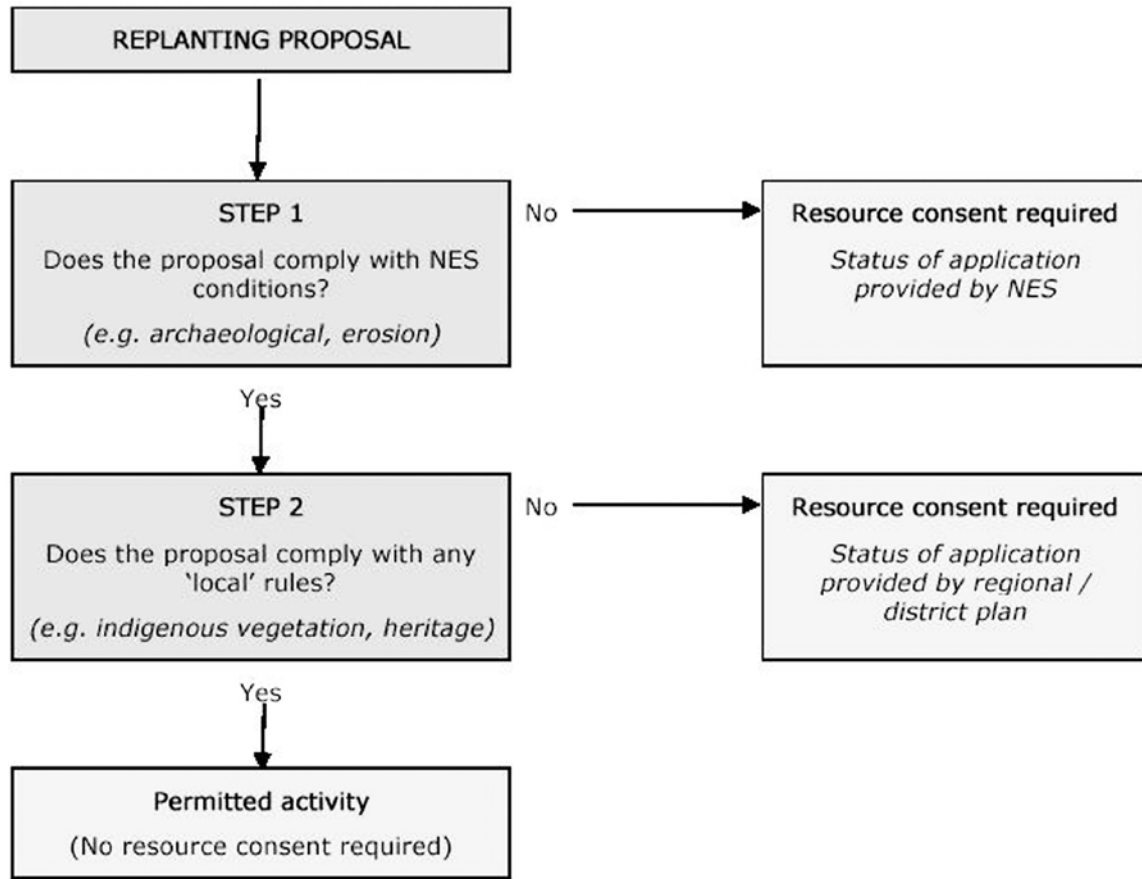


Figure 2: Two-step process for determining activity status of replanting proposal

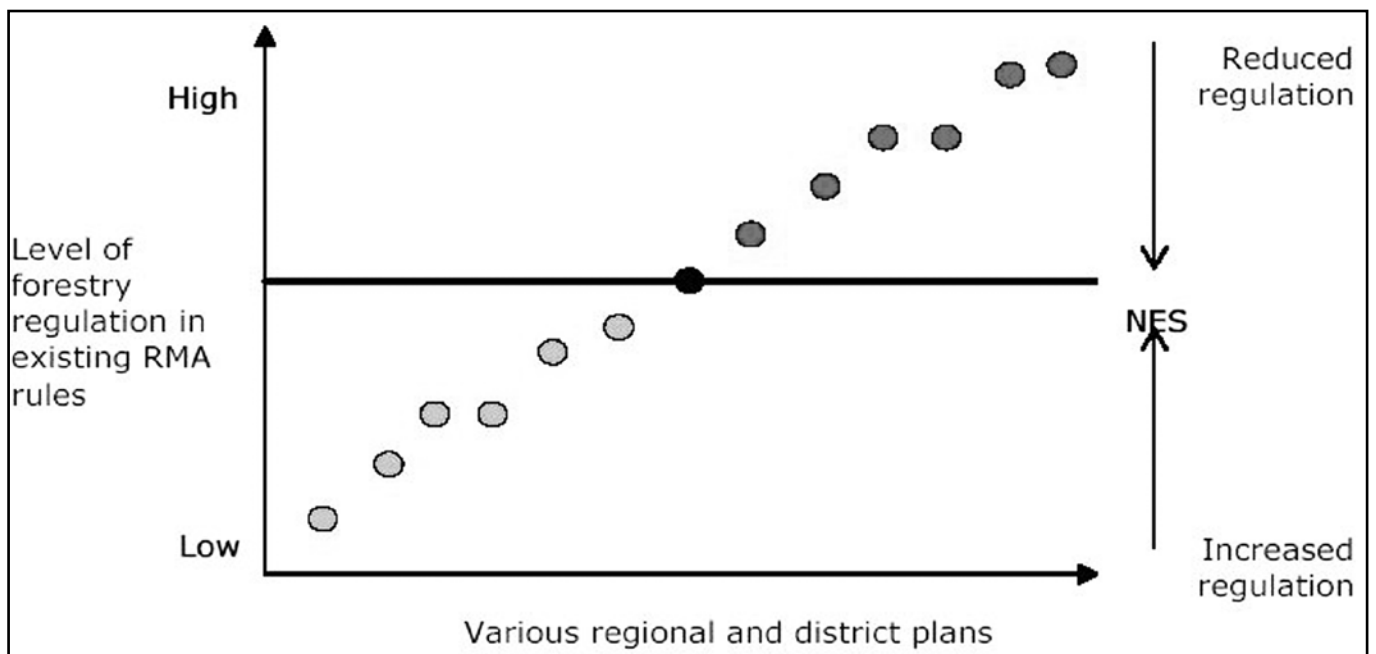


Figure 3: Overall impact of NES across different regions and districts

However, the overall costs and benefits of the NES will depend on where the NES ultimately sits on the spectrum of regulation shown on Figure 3.

At a general level, there are two key issues that will determine the impact of the NES on plantation forestry activities. These are the outcomes of related work streams that are yet to be completed and whether the detailed provisions of the NES achieve the overall 'balance' that is intended.

Incomplete work streams

It is very difficult to accurately assess the impact of NES rules due to uncertainty regarding the form and content of related work streams that are either incomplete or unavailable. These work streams include:

- (a) The proposed erosion susceptibility system;
- (b) Identification of nationally important water bodies;
- (c) The relationship between riparian setback requirements and deforestation liabilities under the Emissions Trading Scheme; and
- (d) The relationship between FENZ⁴ and the NES.

By way of example, several different forestry activities, including afforestation and earthworks, have conditions that refer to the proposed erosion susceptibility system. The status of the activity and whether it requires consent will depend on whether the land in question is in a green (permitted), orange (controlled) or red (restricted discretionary) zone.

Unfortunately, the impact of this proposed system is very difficult to determine as the final locations of these different zones remain unknown. In addition, how these rules will be interpreted for plantations that extend across different zones (i.e. the "bundling" issue⁵) is a subject of much debate. Until greater clarity is received on these issues, the practical impact of the NES on plantation forestry activities remains uncertain.

Overall balance - devil in the detail

As noted above, the NES seeks to achieve a balanced approach that does not significantly tighten or loosen the overall management of plantation forestry. However, as currently proposed, there is real concern that the NES does not reach a midpoint and will instead result in an overall increase in regulation of the sector across New Zealand.

The key reasons why this outcome may result are that the NES:

- (a) will automatically replace any rules in district or regional plans that are more lenient than the NES, thus causing in many parts of New Zealand a marked increase in regulation of plantation forestry; and
- (b) provides for more a wide range of more stringent 'local' rules to remain in force and other more stringent 'local' rules to be developed by local authorities.

Consequently, if the NES becomes operative in its current form, there is the concern that it offers only limited benefits for the forestry sector and substantial increased costs and risks. In short, the objective of consistency may be pursued at the cost of overall increase in regulation of the sector with significant scope for further regulation through 'local' rules.

The effect of the above is that if the detail of the NES is not carefully reconsidered, it may result in an overall significant increase in the level of regulation and actually discourage further investment in plantation forestry. Such an outcome will undermine the objective of the NES, which is to create a management framework that encourages growth of the forestry sector.

CONCLUSION

When the NES was first proposed, Andrew McEwen, the president of NZIF made the following comment:

Whether or not a "big stride forward" occurs will in large part turn upon the outcome of the submission process and whether the concerns raised by the forestry sector are addressed.

As usual, the devil lies in the detail. Until the final wording of the NES is confirmed and the related work streams completed, the jury will remain out as to whether the NES will achieve its intended objective and provide a meaningful benefit to the forestry sector.

⁴ *Freshwater Ecosystems of New Zealand (FENZ) is a proposed system of mapping databases being developed by the Department of Conservation.*

⁵ *Where the activity status for different activities under one proposal differs, the entire proposal may be assessed against the most stringent activity status, a process called "bundling".*