

The proposed national environmental standard for plantation forestry – an update

Introduction

Approximately 12 months ago, the Government released the Proposed National Environmental Standard for Plantation Forestry (the NES). 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.

In an earlier edition of this journal, we discussed the objectives of the NES, how it will work in practice, and whether it will provide an overall benefit for the forestry sector. This article provides a brief update on what has happened since then, the current status of the NES, and what you can expect next.

What has happened so far?

The NES has been through a number of stages since it was first released. The general process for development of a NES is illustrated in **Figure 1** and summarised below.

Proposed NES

Released in September 2010, the NES was open for public submissions until mid October 2010. A total of 117 submissions were received, with the majority being received from local government (37 submissions) and the forestry industry (27 submissions). Of the submissions received, 54% conditionally supported the NES, with 41% in opposition.

Following the close of submissions, five working groups of key stakeholders were established to focus on issues raised in submissions. These working groups are illustrated in **Figure 2**, and include a main working group with four sub-groups relating to erosion susceptibility, biodiversity, water and deforestation liabilities.

Revised NES

The main working group provided a recommendation to the Ministry for the Environment on changes that should be made to the NES. This recommendation formed the basis of a revised NES which was circulated for further comment in May 2011. This was followed by a series of workshops to answer questions about the revised NES and an opportunity to make further submissions in June 2011.

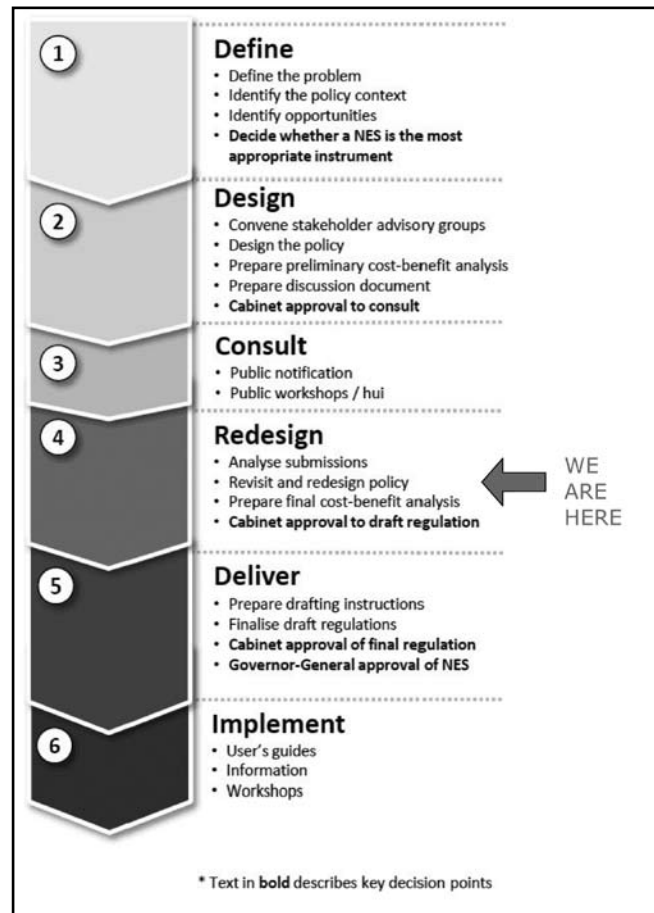


Figure 1: The NES development process (source: MfE)

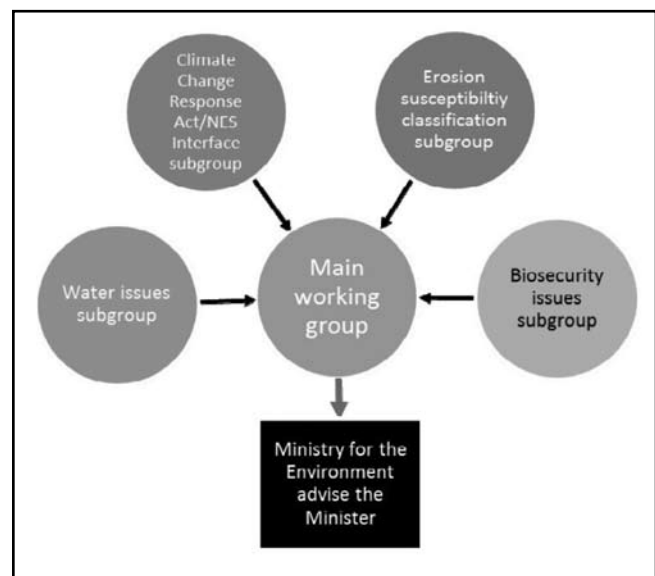


Figure 2: The main working group and subgroups (source: MfE)

Some of the key changes in the revised NES from the original version were:

- The inclusion of an erosion susceptibility classification mapping system, which grouped land into one of four categories based on the likelihood of erosion. These classifications will be used to determine whether plantation forestry activities on a particular block of land require resource consent;
- Alternative scenarios for setbacks, depending on whether or not a solution could be found to the issue of deforestation liability under the Emissions Trading Scheme; and
- A review of local authority rules (ROAR) to enable a more accurate assessment of how the NES would affect particular regions and districts.

An important issue that remained unresolved in the revised NES was the potential for “bundling” to occur, where all activities within a single proposal are assessed under the most restrictive activity status. Applying this approach to forestry activities could result in onerous and unnecessary consent requirements that are contrary to the objective of the NES.

Submissions on the revised NES

A total of 62 submissions were received on the revised NES. We understand that many of the submissions continued to provide conditional support to the NES. Key concerns raised by some forestry sector submitters were:

- The potential for “bundling” to occur, as outlined above;
- The extent to which the NES provides for local authorities to include rules in district and regional plans that are more stringent than the rules in the NES;
- The scale of the erosion susceptibility maps and resulting potential for inaccuracy when the maps are applied at a site specific level;
- The extent of regulation of forestry activities within the green, yellow and orange traffic light system of land erosion susceptibility;
- River crossing rules (regarding culverts and bridges) based on catchment size rather than actual or estimated flood flows; and

- Inconsistency between the NES and the Emissions Trading Scheme. In particular, the significant economic impacts if compliance with proposed replanting setback rules resulted in forest owners incurring ETS liabilities.

What is the current status of the NES?

Since the revised NES was released and further submissions received, the NES is undergoing further refinement through the working parties including a detailed cost/benefit analysis to evaluate whether the proposed NES will achieve its intended purpose and provide meaningful benefits to the forestry sector.

What happens next?

If the Ministry decides to continue with the NES, the next key step is Cabinet approval to draft regulations. Preparation of any final version of the NES in the form of regulations involves a number of steps as set out in Figure 1 and concludes with the Governor General approving the final NES.

Once approved by the Governor General, the NES will have immediate legal effect. All Councils must then act in accordance with the NES, including immediately amending their plans to remove any rules that conflict with the NES.

As noted in our earlier article, the practical impact of the NES will vary depending on the existing level of regulation in different districts and regions throughout the country. However the NES remains a very important document that the forestry sector should continue to watch with interest.

For further information please contact Chris Fowler or David Pedley of Adderley Head.

Adderley Head is a specialist resource management law firm with particular experience in issues relating to plantation forestry (www.adderleyhead.co.nz).