

Major environmental law reform affecting the plantation forestry sector

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The Kawarau River, one of the many freshwater bodies to be improved by the freshwater reforms

Abstract

This paper discusses three major changes that are occurring to the way natural and physical resources are managed in New Zealand. These are the package of freshwater reforms recently announced by the Government, the proposed national direction for indigenous biodiversity and, most significantly, the proposed overhaul of the Resource Management Act 1991 (RMA).

The freshwater reform package is intended to achieve a paradigm shift regarding freshwater management. There is tension between the new regime that is

intended to be implemented locally by regional councils and the objective of national consistency embodied in the National Environmental Standards for Plantation Forestry (NES-PF). Failure to resolve this tension raises the prospect of multiple planning processes as each regional council seeks to establish new water quality standards for freshwater bodies within their respective regions. This would present a real challenge for the forestry sector and could lead to fragmentation of the NES-PF.

The proposed national direction for indigenous biodiversity as currently worded will lead to new regulation designed to manage the potential adverse effects of harvesting activities on indigenous

biodiversity. Such regulation could potentially impose significant additional costs on the forestry sector.

The Resource Management Review Panel has released its report on resource management reform. It recommends significant and wide-ranging changes to our current resource management law and processes (Resource Management Review Panel, 2020). Key recommendations include repealing and replacing the RMA with three new enactments, and combining and replacing regional and district plans with a single plan for each region. Overall, the Panel recommendations appear to be favourable for the forestry sector.

Introduction

Major changes are occurring to New Zealand's system of environmental management. Longstanding and deep-seated environmental issues are being tackled head-on and the RMA itself seems likely to be replaced. Each of these changes has potentially significant implications for regulatory control and management of day-to-day forestry activities. This paper presents an overview of these major reforms, considers the implications of these changes for the plantation forestry sector, and comments on how the sector might respond.

Current RMA controls affecting forestry sector

Environmental management of plantation forestry activities primarily occurs under the NES-PF. In brief, the NES-PF regulates eight core forestry activities, as well as ancillary activities such as clearance of indigenous vegetation.

Council plans can (in limited circumstances) contain more stringent rules controlling forestry activities, including rules that give effect to a freshwater management objective and rules that protect indigenous biodiversity. Some activities related to plantation forestry are outside the scope of the NES-PF, such as vegetation clearance prior to afforestation (including spraying) and logging truck movements.

Although not perfect, the NES-PF provides for consistent regulation of plantation forestry activities throughout New Zealand, which has reduced the need for foresters to participate in local planning processes and obtain resource consents under local plan rules.

Freshwater reform package

Degradation of our freshwater resources is a chronic, widespread and deep-seated problem (Cabinet Paper, 2020). Many interested parties consider the current framework is inadequate to cope with the scale of the problem. In response, the Government has recently released the Healthy Freshwater reform package that is intended to achieve a paradigm shift regarding freshwater management in New Zealand (freshwater reform).

The National Policy Statement for Freshwater Management 2020 (NPS-FM) and the National Environmental Standards for Freshwater 2020

(Freshwater NES), coupled with changes to the RMA passed earlier this year, are collectively intended to set New Zealand on a new pathway regarding freshwater management. Most of these changes took effect on 3 September 2020.

Key concept and objectives

The freshwater reform is guided by the concept of Te Mana o te Wai, which is about restoring the balance between the water, the wider environment and the community. The reform package is intended to deliver on this outcome through objectives that seek to:

- Stop further degradation of freshwater resources within five years, and
- Reverse past damage to bring freshwater resources, waterways and ecosystems to a healthy state within a generation.

Streamlined freshwater planning process for regional councils

Regional councils are responsible for implementing the freshwater reform and promoting changes to regional planning instruments. Earlier this year the RMA was amended to include a streamlined process for creating or amending regional freshwater plans, which includes independent hearings panels convened by the newly established Chief Freshwater Commissioner to hear submissions and make recommendations. New provisions deal with the composition of panels, the procedure for hearing submissions, and recommendations by hearings panels.

How will the freshwater reform affect forestry?

The Freshwater NES

The Freshwater NES is primarily directed at managing the effects of pastoral, horticultural and dairy farming activities on freshwater bodies. The Freshwater NES is subject to the NES-PF, which means that the NES-PF regulations will apply instead of the Freshwater NES where there is overlap between the two. The objective is to avoid duplication. So in situations where the NES-PF and the Freshwater NES overlap, such as commercial forestry activities around streams, wetlands, and culverts, the NES-PF takes precedence.

The NPS-FM

In contrast, the NPS-FM is a higher-order document that will apply to plantation forestry activities. The key provisions most likely to affect the forestry sector are discussed below.

Requirements for fish passage

The NPS-FM includes requirements for regional councils do a number of things in order to better provide for fish passage, including inserting the following objective directly into their regional plan(s) without following the usual RMA process for amending plans:

The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats.

In addition, regional councils must:

- Provide fish passage for desired fish species within the region's waterbodies, and prevent fish passage for undesired fish species
- Change their regional plans so that decisions on consent applications for instream structures take into account how well the structure will provide for fish, as well as the maintenance and monitoring proposed for the structure
- Change their regional plans so that remediation of existing structures is encouraged, and
- Identify instream structures throughout the region and promote remediation of existing structures where they do not currently provide for fish passage based on the ecological criteria described in the New Zealand Fish Passage Guidelines 2018 (Fish Passage Guidelines) (New Zealand Fish Passage Advisory Group, 2018).

The NES-PF already requires that new river crossings must provide for the passage of fish. At this stage it is unclear whether regional council implementation of the NPS-FM will create additional requirements beyond what is already contained in the NES-PF.

It seems likely regional councils will encourage foresters to remediate existing river crossings that do not meet recommended design specifications in the Fish Passage Guidelines, particularly in waterways containing prioritised fish populations or species. If

the design specifications cannot be met, foresters may need to upgrade the river crossing in question to ensure fish passage is preserved (e.g. by the addition of ramp fishways, baffles, mussel spat ropes or bypass structures).

Threatened species

The NPS-FM emphasises the need for regional councils to recognise and provide for threatened freshwater species, being species that meet the criteria for nationally critical, nationally endangered or nationally vulnerable species in the *New Zealand Threat Classification System Manual*. The specific directives in the NPS-FM are for regional councils to:

- Identify the location of habitats of threatened species within the region's freshwater management units (FMUs)
- Identify and map any wetland that is known to contain threatened species (even if that wetland is very small or ephemeral), and
- Manage the aspects of the relevant ecosystem that provide the habitat or conditions for that threatened species to survive.

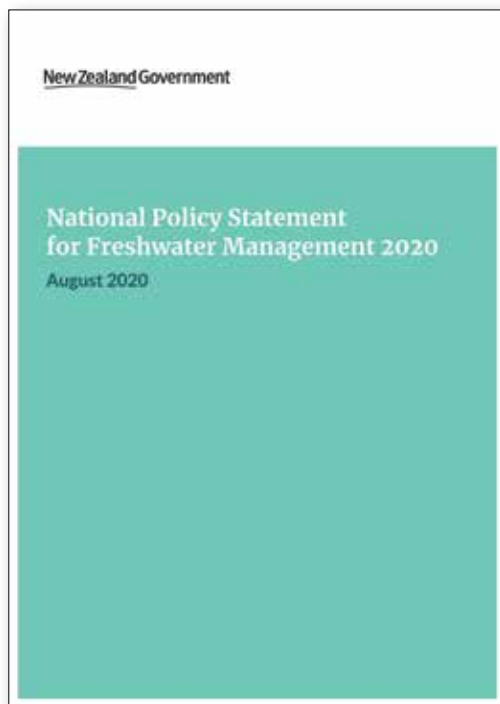
It is likely that regional councils will focus on those waterways that are identified habitat for threatened species. Where land use activities are adversely impacting the health of those threatened species or their habitats, regional councils may require management improvements of those activities.

Suspended sediment and deposited sediment

Sediment is widely viewed as one of the most prominent environmental stressors facing New Zealand's freshwater and estuarine environments (Cabinet Paper, 2020), and was identified as a significant gap in the former NPS-FM. That has been addressed by the introduction of two new attributes with National Bottom Lines for the following types of sedimentation:

- Suspended sediment (measured either by visual clarity or by converting turbidity measurements), which will require regional councils to limit resource use via regional freshwater rules to achieve outcomes specified in the NPS-FM, and
- Deposited sediment (measured by proportional coverage), which will allow regional councils to work towards desired outcomes through non-statutory action plans (that do not necessarily limit resource use).

Both sediment attributes account for natural variation between different river types



through environmental classification systems and incorporate exceptions for naturally occurring processes.

Government officials estimate that about 31% of monitored sites will require reductions in sediment load to meet the suspended sediment bottom lines (Cabinet Paper, 2020). They note that the new sediment policy will likely lead to some land use change (hill country pasture to forestry).

Water quantity and environmental flows

The new NPS-FM now includes water quantity (water flows and levels) as one of the five key components of freshwater ecosystem health that must be managed and reported on. Consequently, every regional council must include rules in its regional plan that set environmental flows and levels for each FMU and may set different flows and levels for different parts of the FMU. In doing so, regional councils must have regard to (among other matters) the foreseeable impacts of climate change.

The wording of the NPS-FM is broad enough to allow regional councils to consider the effects of afforestation on water yield in flow-sensitive catchments. This may cause some regional councils to introduce new planning rules (or revisit existing provisions) to manage the effects of afforestation on water quantity.

Summary of potential impacts for forestry

In summary, the NPS-FM requires each of the 16 regional councils to develop objectives, policies and rules about sediment discharges, water quantity, threatened species and fish passage. This work must occur through a process of engagement with affected communities followed by notification of new freshwater provisions in regional policy statements and regional plans by December 2024.

This raises the prospect of wave-after-wave of planning processes as each regional council seeks to

establish new water quality standards for FMUs within their respective regions. It presents a real challenge for the sector to meaningfully engage in these processes, which will be time-consuming and potentially complex.

In addition, there is a real risk that new regional freshwater rules will fragment the consistent approach currently provided by the NES-PF and lead to a situation where foresters need to comply with both the NES-PF and freshwater rules within different regional plans across the country. This outcome would undermine one of the key objectives of the NES-PF, which is to increase the efficiency and certainty of managing the environmental effects of plantation forestry activities.

Tension between regional implementation and national consistency

Against this context, how can the NPS-FM be implemented in a way that works effectively for the forestry sector? The answer to this question lies in developing a pathway forward that resolves the tension between the new freshwater regime that is intended to be implemented locally by regional councils and the objective of national consistency embodied in the NES-PF. This is ultimately a matter for central government to resolve, but a possible response is discussed below.

Under the NES-PF plantation forestry activities are generally permitted where permitted activity conditions are complied with, unless the activity is in a high-risk area, as described by the risk management tools incorporated by reference in the NES-PF (e.g. the Erosion Susceptibility Classification tool, the Wilding Tree Risk calculator and the fish spawning indicator). The risk-based permitted activity approach already embedded in the NES PF could be extended in response to the NPS-FM.

Those parts of the NPS-FM that require identification of high-risk areas and environmental features could be implemented locally. For example, the identification of FMUs, values and attributes within specific waterways, the location of threatened species, outstanding water bodies and natural inland wetlands that require protection under the NPS-FM could occur at the local level through regional planning maps. These maps, which are essentially a risk management tool, could then be incorporated by reference into the NES-PF.

Those parts of the NPS-FM that require setting of rules or limits on resource use to manage the effects of plantation forestry activities on these identified high-risk areas and features could be implemented by amendment to the NES-PF. The NES-PF provides a ready-made vehicle for this approach with regulations already directed towards fish passage, fish spawning, sediment discharges, and setbacks from wetlands and waterways. These could be revised and updated to give effect to the NPS-FM.

Under this approach, the NES-PF would be amended to include new NPS-FM regulations and new NPS-FM risk assessment tools based on regional planning maps



Plantation forest harvesting



An example of the biodiversity found in New Zealand's plantation forests. Photo: Andrea Lightfoot (unsplash.com)

that are incorporated by reference into Schedule 2 of the NES-PF. The regional maps would provide a spatial database that enables site-specific assessments of risk to be undertaken regarding values, features and attributes that are protected under the NPS-FM. Regional councils, in the usual way, would have responsibility for processing any resource consents triggered by forestry activities that do not comply with the NES-PF permitted activity standards.

There are several advantages with this approach. It retains the integrity of the NES-PF as the primary planning instrument governing plantation forestry activities and achieves coherence between different national direction documents. It also enables a robust suite of regulations to be developed at the national level, recognising that the potential adverse effects of plantation forestry are the same or similar throughout the country, and avoiding unnecessary churn in regional planning processes for the forestry sector.

Finally, scope would remain for regional freshwater rules to be more stringent than the NES-PF, subject to the existing and important proviso that greater stringency must be justified in the specific circumstances of the region.

Indigenous biodiversity reform

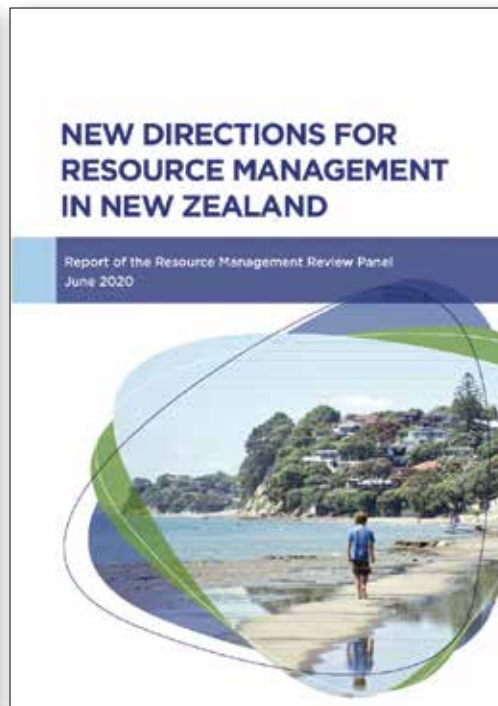
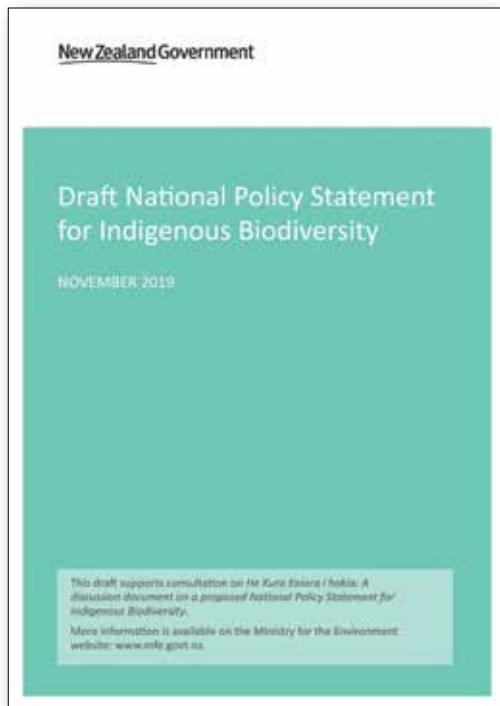
Indigenous biodiversity protection through the RMA has been a slow-burning issue for many years.

Successive governments have grappled with how to arrest the serious decline in native species and naturally uncommon ecosystems. In November 2019, the Government notified a proposed National Policy Statement for Indigenous Biodiversity (the proposed NPS-IB). It is intended to provide clear national direction to address key gaps and inconsistencies in the management of terrestrial indigenous biodiversity under the RMA.

The proposed NPS-IB requires that local authorities must identify significant natural areas (SNAs) using specified ecological criteria. All SNAs within plantation forests must be identified and mapped within district plans. Plantation forests that are identified as containing SNAs are deemed to be 'plantation forest biodiversity areas' (PFBAs).

Within PFBAs, the adverse effects of plantation forestry activities on both (a) threatened or at-risk flora must be managed and (b) significant habitat for threatened or at-risk indigenous fauna must be managed, to maintain long-term populations of such fauna.

Local authorities are required to maintain indigenous biodiversity outside SNAs, including indigenous vegetation that does not qualify as SNA and highly mobile fauna. Policy statements and local plans must be amended to manage adverse effects of land use, including plantation forestry activities, on such indigenous biodiversity.



of the delivery of the document has now been extended to April 2021, after the general election. At the time of writing it remains unclear whether the incoming government will persevere with the NPS-IB and, if so, how it will respond to these submissions.

Major RMA reform – the Randerson Report

The Resource Management Review Panel (the Panel) chaired by Mr Tony Randerson Q.C. has released its report on resource management reform (known as the Randerson Report). It recommends significant and wide-ranging changes to our current resource management law and processes via a transitional process over 10 years. The Randerson Report has received initial support

from both major political parties and most of the recommendations seem likely to be implemented.

The Panel recommended repealing and replacing the RMA with three new enactments: a Natural Built Environments Act (NBEA); a Strategic Planning Act (SPA); and finally a Managed Retreat and Climate Change Adaptation Act (CCA).

The purpose of the NBEA, expressed by the Panel, is to enhance the quality of the environment to support the wellbeing of both future and present generations. The recommended SPA seeks to address a shortcoming the Panel identified by providing and setting long-term strategic goals to enable land and resource planning to be better integrated with the provision of infrastructure as well as associated funding and investment.

Another recommendation from the Panel is that regional and district plans should be combined and replaced with a single plan for each region, described as a combined plan. Effectively, this would reduce the number of resource management plans from over 100 to just 14 – one for each planning region in New Zealand. Linked to this is the recommendation that mandatory environmental limits be set for biophysical aspects of the environment including freshwater, coastal water, air, soil and habitats for indigenous species.

The Panel also identified the lack of national direction to support the purpose and principles of the RMA as a key issue in the implementation of the Act. This has resulted in duplication, and led to inconsistencies in the way the environment is being managed across different parts of the country. The Panel recommend the retention of national direction and propose improvements so they may be more used more effectively to achieve intended outcomes. In

How will the proposed NPS-IB affect forestry?

It appears inevitable the proposed NPS-IB as currently worded will lead to new regulation designed to manage the potential adverse effects of harvesting activities on indigenous biodiversity. Such regulation could potentially impose significant additional costs on the forestry sector.

The proposed NPS-IB notes that the NES-PF has rules for indigenous biodiversity and plantation forests. The accompanying Cabinet Paper states that the management approach promoted in the proposed NPS-IB would be mainly implemented through changes in the NES-PF once the NPS-IB is finalised (Cabinet Paper, 2019).

At present, the NES-PF contains rules about clearance of indigenous vegetation that does not qualify as an SNA. Rules relating to SNAs are currently included in numerous district plans because the NES-PF allows district plans to be more stringent where such rules relate to the protection of significant natural areas.

As currently worded, it appears that the proposed NPS-IB would likely require amendment to the NES-PF to:

- Manage the potential adverse effects of plantation forestry activities on threatened or at-risk flora and fauna within PFBAs, and
- Manage the adverse effects of plantation forestry activities on indigenous biodiversity and highly mobile fauna outside mapped SNAs.

The New Zealand Forest Owners Association and many foresters lodged submissions on the proposed NPS-IB, seeking substantial changes to make the document more workable for the plantation forestry sector. Due to the COVID-19 pandemic, the timeframe

particular, the Panel proposed that all existing and new national direction should be brought together into a coherent combined set and any conflicts between them resolved.

How will the proposed RMA reform affect forestry?

Overall, the Panel recommendations appear to be favourable for the forestry sector. The increased focus on national direction underscores the importance of the NES-PF. The proposed consolidation of all national directions into one coherent package would address uncertainty about the relationship between the NES-PF and other national directions such as the NPS-FM and NPS-IB.

In addition, the proposed reduction in the number of planning instruments would simplify planning processes and create efficiencies for the forestry sector. The spatial planning recommendations would potentially allow foresters to promote locations at a regional level that are best suited for plantation forestry.

Further, the promotion of activities that mitigate or sequester carbon through the proposed NBEA is likely to favour the forestry sector given that plantation forestry can assist New Zealand achieve its commitment to reduce greenhouse gas emissions under the Paris Agreement.

Conclusion

Not since the introduction of the RMA in 1991 has environmental reform occurred on this scale. Overall, the forestry sector is reasonably well placed to accommodate these changes. The NES-PF has helped the sector become 'match-fit' to national direction so that it is generally in good condition to adapt to further changes that will inevitably flow from these reforms.

Many of the wider RMA system reforms appear to be favourable for the forestry sector. However, the NPS-FM and the NPS-IB will potentially lead to increased regulation of forestry activities.

Accordingly, it is important that foresters take opportunities to engage in discussions about freshwater management and indigenous biodiversity at the national and regional levels. Consistent and workable regulation of forestry activities seems a sensible goal,

ideally via refinement to existing provisions within the NES-PF rather than through myriad new regional rules.

Disclaimer

This is a brief summary for information purposes only and is not legal advice.

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