

Chair
Cabinet Economic Growth and Infrastructure Committee

Revised Policy Proposal for the National Environmental Standard for Plantation Forestry

Proposal

1. This paper presents details of a National Environmental Standard for Plantation Forestry (NES-PF) under the Resource Management Act 1991 (RMA).
2. We seek Cabinet agreement to the NES-PF policy proposal and for the Ministry for Primary Industries (MPI) to commence the regulation drafting process, in collaboration with the Ministry for the Environment (MfE).

Executive Summary

3. Plantation forestry is a nationally important industry that faces significant uncertainty and variation in the RMA planning framework. The proposed NES-PF provides a consistent approach to resource management rules for plantation forestry.
4. The policy objective of the proposed NES-PF is to maintain or improve the environmental outcomes associated with managing plantation forestry activities nationally under the RMA and to increase efficiency and certainty in the management of plantation forestry activities.
5. The NES-PF will provide a consistent planning framework for 8 main forestry activities¹. Each activity can be carried out without resource consent, provided that adverse environmental effects and risks can be appropriately managed. Where this isn't possible, resource consent is required. Consent requirements are tailored to the level of risk involved, so that councils have the control necessary for sustainable management and foresters have as much certainty as possible in the circumstances.
6. The removal of unwarranted variation between councils' plans will provide greater efficiency and certainty for the management of those activities nationally, and maintain or improve environmental outcomes associated with forestry management operations.

¹ Mechanical land preparation, afforestation, earthworks, forestry quarrying, river crossings, pruning and thinning to waste, harvesting, and replanting.

7. The proposed NES-PF would still allow for some local decision making to be retained where appropriate, to manage nationally important resource management issues and unique and sensitive receiving environments. For example, rules and consents can be more stringent than the NES-PF if they are giving effect to the National Policy Statement for Freshwater Management (NPS-FM), the New Zealand Coastal Policy Statement (NZCPS), the National Environmental Standard for Sources of Human Drinking Water, and Treaty settlements.
8. In June 2015 Cabinet approved public consultation on the subject matter of the proposed NES-PF [EGI Min (15) 12/4]. Following consultation, 18,732 submissions, including 356 unique submissions, were received. The most contentious issue was in respect of not allowing Councils to over-ride the EPA on any approved GM tree stock with 16,000 form submissions co-ordinated by anti-GM groups.
9. Following consultation, MPI engaged extensively with a broad range of stakeholders to address concerns raised. This included:
 1. direct engagement with stakeholders and interested parties;
 2. widening membership of the Stakeholder Working Group;
 3. meeting with the Stakeholder Working Group, eNGOs and regional council special interest groups; and
 4. commissioning advice from subject matter experts and Crown Research Institutes.
10. The NES-PF has subsequently been revised to address the substantive issues raised by submitters
11. The revised Cost Benefit Analysis and an Assessment of Environmental Effects indicate that the proposed NES-PF will achieve positive economic and environmental benefits, based upon the assumptions of those analyses.
12. We consider the proposed NES-PF to be the best option to achieve sustainable management of the plantation forest industry through regulatory efficiency for the sector. This in turn will facilitate business growth and regional economic development by building a strong regulatory platform to grow investor confidence within the sector.
13. MPI, MfE, and Te Puni Kokiri (TPK) will also continue to engage with iwi to ensure that the proposed NES-PF will meet their needs and Treaty obligations.

Background

14. Plantation forestry covers 1.72 million hectares of New Zealand's land area and generated \$4.7 billion of export revenue in 2014/15. Plantation forestry not only represents an important component of the economy, but also a valuable environmental resource. Plantation forests act as nutrient filters, prevent soil

erosion, provide valuable habitat for indigenous flora and fauna, and store carbon.

15. Plantation forestry is characterised by a high level of cross-district and regional ownership of assets. This causes foresters to be faced with higher costs and uncertainty as a result of operating under inconsistent regimes that are subject to ongoing change. Analysis shows that more than 1 million hectares of plantation forestry operates across regional boundaries. In total, more than 200 forest owners operate under multiple planning frameworks.
16. Comparative analysis of district and regional plans shows that there is unwarranted variation² between plans. This variation can lead to uncertain environmental outcomes and planning difficulties for the forest industry, particularly for forests which cover several council or planning boundaries.
17. Forestry rules in district and regional plans are inconsistent between local authorities³. Further, independent reports indicate divergence is increasing and highlight that variation is often not for discernible reasons, simply different approaches to the same issue⁴.
18. Managing plantation forests requires long term planning and certainty. For the two major species grown in New Zealand, radiata pine and Douglas fir, the rotation length is typically between 26 and 32 years and 45 and 50 years respectively. Committing to a crop rotation of this length means that foresters must contend with risks and uncertainties associated with a long term investment, including changes in planning and regulatory conditions.
19. For this latter risk, foresters are likely to face at least three reviews of district and regional plans under which they operate during the rotation of a single crop, and some forestry companies have been involved in up to 12 plan review processes at one time. This shows the considerable inefficiency faced by the sector, but also the number of different rules and conditions that are often being imposed.

Need for a national environmental standard

20. These issues make plantation forestry a good candidate for a National Environmental Standard. National Environmental Standards are one of many regulatory instruments under the RMA to enable national consistency in resource management and planning.
21. National environmental standards are regulations made under sections 43 and 44 of the RMA. Standards may include numerical limits, planning controls, and narrative statements or methodologies.

² Unwarranted variation is defined as a level of variation between plans that does not provide any discernible environmental, economic, social or cultural benefit and imposes a cost.

³ Boffa Miskell Evaluation of effectiveness of the NES on Environmental Outcomes, 17 May 2016

⁴ Brown and Company Planning Group, Review of regional plan provisions relating to forestry: Update of 2010 Report. 12 February 2016.

Process to date

22. In 2009, MfE scoped how a NES-PF might increase consistency in the way that plantation forestry is managed through regional and district plans around New Zealand. However, the development of an NES-PF was put on hold while other RMA reforms were progressed [EGI Min (13) 6/4].
23. In early 2013 Cabinet agreed that MPI would continue to engage industry and stakeholders in a discussion of complementary measures to address forestry issues [EGI Min (13) 6/4 refers]. MPI convened a working group of stakeholders comprising members from local government, the forestry sector, and environmental groups ("The Stakeholder Working Group"). This group continued to provide advice on the development of good practice draft planning rules, consistent with RMA principles, which MPI analysis indicated could be implemented in the form of a NES-PF.
24. In June 2015, Cabinet approved public consultation on the subject matter of a proposed NES-PF, [EGI Min (15) 12/4 refers] inviting a report back to EGI in late 2015 for final policy approval and, subject to the outcome of the public consultation, for approval to issue drafting instructions for the NES-PF. Due to the large number of submissions received, this report back was deferred until June 2016.

Revised Proposal

Policy objective

25. The policy objective of the proposed NES-PF is to maintain or improve the environmental outcomes associated with managing plantation forestry activities nationally, and to increase efficiency and certainty in the management of plantation forestry activities under the RMA.
26. The sustainable management of New Zealand's plantation forests provided through a national environmental standard will enable people and communities to provide for their economic, social and cultural well-being while avoiding, remedying or mitigating any adverse effects of forestry activities on the environment.

Evaluation of options

27. MPI evaluated several alternatives for achieving the objective, including non-regulatory alternatives. However, none of these options were considered as effective as the NES-PF when assessed against objective criteria. A regulatory impact statement is attached which evaluates the options in more detail.

Link to other instruments of National Direction

28. The NES-PF forms part of RMA National Direction. Other National Direction tools include the NZCPS, NPS-FM, and National Environmental Standard for Sources of Human Drinking Water.

29. The NPS-FM directs regional councils to manage freshwater and activities that affect freshwater quality in their regional plans. Specifically, regional plans must include limits on the quantity of contaminants that arrive in freshwater bodies, with different sources and contributors of contaminants accounted for differently. The NES-PF should not conflict with other RMA national policy tools. This was a strong theme expressed in submissions.
30. To ensure these instruments complement and work alongside each other, the NES-PF includes flexibility provisions to allow councils to have more stringent rules, when these rules are required to give effect to other RMA national direction tools, including:
 1. the NPS-FM;
 2. the NZCPS; and
 3. matters outlined in section 6(a)-(c)⁵ of the RMA (rather than limit this to specific situations).
31. The NES-PF has conditions specifically for the protection of freshwater quality, especially for forestry activities that may result in sedimentation or pollution. This complements the NPS-FM and NES for Sources of Human Drinking Water.
32. The NES-PF will link to other government initiatives for environmental management and economic growth, including the Wildlife Act, and Regional Economic Development programmes, as well as the Emissions Trading Scheme and initiatives such as the Afforestation Grant Scheme. Consideration has also been given to relevant aspects of Treaty settlement legislation and supporting Accords and agreements.

Proposed National Environmental Standard for Plantation Forestry

33. The proposed NES-PF will achieve environmental outcomes, and regulatory efficiency and certainty by:
 1. providing nationally consistent rules that remove unwarranted variation between councils' RMA rules for plantation forestry;
 2. establishing rules that permit plantation forestry activities where it is efficient to do so, and the activities do not have a significant adverse effect on the environment. Where a risk of significant adverse effect on the environment is likely, a resource consent is required; and
 3. providing for councils to set more stringent rules to manage unique local matters and sensitive receiving environments⁶.

⁵ Matters of national importance

6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins...

6(b) the protection of outstanding natural features and landscapes...

6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

⁶ As in the NES for Telecommunications, council rules apply for RMA section 6(e) and (f) matters.

34. Eight main plantation forestry activities have been addressed in the proposal⁷:
1. mechanical land preparation;
 2. afforestation;
 3. earthworks;
 4. forestry quarrying;
 5. river crossings;
 6. pruning and thinning-to-waste;
 7. harvesting; and
 8. replanting.
35. The proposed NES-PF seeks to codify established good forest management practice through permitted activity conditions. Consent requirements will be specified for activities which do not meet the permitted activity conditions and/or where there is increased risk.
36. Foresters will be required to take a proactive approach toward identifying risks and mitigations through the use of nationally consistent forest management plans. These plans are a means to describe the methodology that ensures compliance with the conditions for a permitted activity. These will include a harvest management plan, erosion and sediment control plan, and quarry management plan.
37. Proper planning for a forestry operation means adverse effects are anticipated and then avoided or mitigated. The NES-PF Management Plan process requires thorough risk assessment to be followed by identifying the most appropriate management responses. These are identified from a suite of existing good management practices that are considered by councils and foresters to achieve positive outcomes which warrant permitted activity status.
38. Through management plans, foresters will be required to describe how they will comply with outcome-based permitted activity conditions. For example, the permitted activity condition for earthworks will require erosion sediment controls to be applied and maintained for the earthworks, to avoid adverse effects. Foresters will be required to detail the sediment control measures being taken and outline how these will avoid adverse effects on adjacent receiving environments. These plans must be provided to councils 20 days before the operation commences.
39. To make sure the plan has been followed, councils have the right to monitor and evaluate action on the ground. Councils can then respond to breaches of the permitted activity conditions, using abatement and enforcement actions if necessary, or by requiring a resource consent.

⁷ There will be some cases where an activity has regional and/or district conditions, matters of control, or matters of discretion which must be met in order for that activity to be permitted.

40. The Resource Legislation Amendment Bill (RLAB) includes a provision which would allow councils to recover costs associated with monitoring activities permitted by a National Environmental Standard. Stakeholders have been supportive of this change and acknowledged that this will address their concerns regarding the cost of monitoring activities permitted by the NES-PF. This provision would assist councils to regularly monitor those foresters who submit poor quality forest management plans.
41. If there is a delay in the passage of the RLAB, councils may need to use alternative options to cover the costs of monitoring forestry activities. Several councils are currently recovering costs of monitoring through the Local Government Act.
42. The NES-PF will specify that forestry activities are permitted, provided that foresters meet terms and conditions to ensure that there are no significant adverse effects. This includes evaluation using the environmental risk assessment tools, which accounts for local environmental variation and risk within a nationally consistent rules framework to achieve consistent and rigorous environmental outcomes. NES-PF regulatory controls comprise tools and methods to avoid or mitigate anticipated effects, rather than identifying thresholds of effects per se.
43. While the application of permitted activity status under the NES-PF limits the requirement for resource consent to the high end of the risk threshold, the rationale for this threshold is effects-based. Consent is required where the effects of an activity cannot necessarily be avoided or mitigated using good practice forest management. In all other circumstances, permitted activity provisions rely on appropriate good-practice forest management. As the level of risk associated with an activity increases, the level of council control over consent is increased.
44. The assessment of environmental effects concluded that activities permitted by the NES-PF, with effects addressed by the specified terms and conditions, do not result in significant adverse effects on the environment and therefore satisfy the requirements of section 43A(3)(b) of the RMA. In addition, the assessment shows that the full suite of NES-PF rules manage environmental effects of forestry activities more effectively and comprehensively than current council rules.⁸
45. Where conditions cannot be met, or where the risk of adverse environmental effects indicates the need for council oversight, a resource consent will be required. Depending on the level of risk this will be:
 1. a controlled activity, where consent must be granted provided conditions imposed by council can be met;

⁸ More detail on the activity specific conditions and how they manage activities for significant adverse effects are described by activity in this paper from paragraph 53 to 68.

2. a restricted discretionary activity, where the consent authority can grant or decline an application on grounds specified in the NES-PF; or
3. a discretionary activity, where conditions relating to storage of fuel, clearance of indigenous vegetation, or fish spawning cannot be met. Consent authorities may grant or decline an application based on their assessment of all matters relevant under the RMA.

Risk assessment tools

46. The proposed NES-PF relies on three environmental risk assessment tools to manage environmental impacts associated with plantation forestry activities. These tools are:
 1. the Erosion Susceptibility Classification (ESC);
 2. Freshwater Fish Spawning Indicator; and
 3. Wilding Tree Risk Calculator.
47. The ESC is a core component of the risk management framework applied through the NES-PF. It provides a screening tool to determine erosion risk in different landscapes as the basis for appropriate levels of control to manage risks for each of the forestry activities, including whether a resource consent is required or not.
48. Under the ESC, there are four zones which are colour coded (green, yellow, orange and red) based on the land's susceptibility to erosion, with red zone land having the highest erosion risk. These classifications were developed by Landcare Research for MPI⁹.
49. In response to submitter concerns, the highest risk orange zone land is now treated with the same controls as high risk red zone land. To isolate the highest risk land the orange zone land was subdivided using a combination of the dominant erosion process, rock type and topography. This allows for more stringent controls to be applied to this land under the regulation.
50. The fish spawning indicator will enable councils and landowners to manage the risk of habitat disturbance during peak fish spawning periods. The spawning times and species covered by the fish spawning indicator have been amended following consultation. Additional species which are sensitive to disturbance, have a high conservation status, or have limited remaining habitat have been added. The rules now apply to 33 fish species (compared to 21 at the time of consultation). Spawning times have been revised to ensure they adequately account for timings across New Zealand. Where there is a high risk of habitat disturbance the rules take a risk-based approach, applying greater control for activities that are likely to disturb the bed of a river.

⁹ MPI Technical Paper 2015/13, Update of the Erosion Susceptibility Classification (ESC) for the proposed National Environmental Standard for Plantation Forestry – revision of the ESC'. June 2015.

51. In rule setting for afforestation, avoiding and mitigating the risk of seed spread from new plantings is a priority. The wilding tree risk calculator identifies the risk of natural spread of wilding conifers, and informs councils and landowners when consent is required. The unintended spread of wilding conifers is currently managed through the Biosecurity Act 1993, as implemented in district council plans and regional council pest management strategies.

Allowing flexibility for council rules to apply

52. In some circumstances, the NES-PF allows council rules to apply to nationally important resource management issues, as well as unique and sensitive receiving environments, in a manner that reflects the unique characteristics of local communities, including Māori. In these circumstances the NES-PF will allow councils to manage activities or effects through more stringent rules, or specifying that these effects are out of scope and should be managed by council plan rules. For example, impacts on historic heritage will continue to be managed by district plan rules. We recognise that where council rules are designed to give effect to specific Treaty settlement legislation and are more stringent than the NES-PF that they will also prevail over the NES-PF¹⁰.

Activity Specific Conditions

53. There are specific conditions associated with each of the eight main forestry. These specify what must be achieved in order for the activity to be undertaken as a permitted activity, or matters where councils can consider in their resource consent decisions. The policy intent for each activity is described below. The risks which are managed with permitted activity conditions in order to meet the significant adverse effects test are outlined here for each activity.

Mechanical land preparation

54. Mechanical land preparation is the alteration of land following afforestation. Permitted activity conditions set standards to ensure the risks of soil erosion, the impacts on habitats and water quality effects are managed in a way which does not result in significant adverse effects. In higher risk areas, as denoted by the ESC, or where permitted activity conditions cannot be met, the risk of environmental degradation is managed through consent or restricted discretionary conditions.

¹⁰ For example giving effect to the Waikato River Vision and Strategy as the primary direction setting policy for the Waikato River and recognising the legislative requirements including s12(4) Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and s13(4) Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010

Afforestation

55. Afforestation is the planting of production forestry on land not currently in forest and that has not been under plantation forestry cover within the past five years. Afforestation permitted activity conditions manage the unintended spread of plantation species into areas not intended for forest production, the impact of plantation forestry on visual amenity, as well as biodiversity loss through land use change.
56. Where these permitted activity conditions cannot be met, or where the risk of afforestation is determined to be high, as evaluated using the ESC and wilding conifer calculator, the afforestation conditions mitigate the risk of significant adverse effects from afforestation, or any subsequent forestry operations, by requiring resource consent. Afforestation is a restricted discretionary activity on ESC red zone land.

Earthworks

57. Earthworks is the modification of the ground surface for forestry road and track construction, upgrading and maintenance, and other activities to facilitate forestry operations.
58. Permitted activity conditions set technical standards to manage the risk of erosion, sediment generation, and impacts on riparian areas and freshwater bodies. Where conditions cannot be met, or where earthworks occur on sites with a high propensity for erosion or on a steep slope, resource consent will be required to ensure that significant adverse effects do not arise.
59. An erosion and sediment control plan is required for all earthworks which involve movement or removal of more than 500m² of soil or rock in any 3 month period in order for earthworks to be a permitted activity. This is to identify the risks of undertaking earthworks and describe how permitted activity conditions will be complied with.

Forestry Quarrying

60. This is the extraction of rock, sand or gravel within a forestry site to build roads and other forest infrastructure. Permitted activity conditions ensure that significant adverse effects do not arise by managing activities to reduce effects on erosion, discharges of sediment to water and effects on visual and community wellbeing.
61. Potential environmental risks of quarrying activities and necessary measures to manage these risks must be identified in a quarry management plan before operations start in order for quarrying to be a permitted activity. On high risk sites which are prone to earthflow erosion (indicated in the ESC), or where any

permitted activity conditions cannot be achieved, quarrying is a restricted discretionary activity.

River Crossings

62. River crossings present a risk of sedimentation of the water column and riverbed, disruption of fish passage and disturbance of spawning habitat, and also pose risks to human safety during their construction and while they remain in place. Permitted activity specifications and conditions for each type of crossing structure used within a forest have been developed with assistance from freshwater scientists and engineers to mitigate these risks so that significant adverse effects do not occur. Where these specifications and conditions cannot be achieved, a resource consent will be required. These conditions relate to the construction, installation, use, maintenance, and removal of river crossings as a permitted activity. Where these conditions are not met, the activity status of river crossings range from controlled to discretionary depending on the crossing type and the associated environmental risks.

Pruning and thinning-to-waste

63. Pruning and thinning involves the removal of branches and reduction in forest stocking rate to promote growth and to produce higher quality logs. Pruning and thinning has low levels of disturbance, and can have benefits for understory growth. In all zones pruning and thinning is a permitted activity because it is generally a low risk activity and is unlikely to result in significant adverse effects on the environment. Conditions have been included to manage discharge of woody debris to waterbodies, and where these cannot be achieved resource consent will be required.

Harvesting

64. Harvesting is the act of felling and extracting trees. The activity, as defined by the NES-PF proposal, includes the disturbance and associated discharge of soil and woody debris to land and water, and a level of disturbance to indigenous vegetation within a plantation forestry management area as a result of harvesting activity. The NES-PF establishes permitted activity conditions to manage the effects of harvesting on:
- a) soil erosion;
 - b) freshwater quality;
 - c) the coastal environment; and
 - d) downstream infrastructure;
65. The NES-PF permits harvesting in the ESC green, yellow, and orange zone with conditions codifying good management practice to manage risks and ensure significant adverse effects do not occur. Where these conditions are not met, harvesting is a controlled activity. In particularly high risk ESC zones or

areas unclassified under the ESC, harvesting is a restricted discretionary activity.

66. Foresters will be required to complete a harvest management plan which must be made available to councils for harvesting to be a permitted activity. When preparing this plan foresters will be required to consider the risks of their operation, including erosion risks, and detail good management practices which they will use to achieve compliance with permitted activity conditions.

Replanting

67. Replanting is a permitted activity, provided conditions in harvesting consents are achieved. The main risk associated with replanting is the re-establishment of forest in inappropriate areas. The RMA protects certain property rights where land use has previously been established lawfully. For this reason, the conditions for replanting differ from those for afforestation, and replanting is a permitted activity in all ESC zones.
68. The conditions for replanting manage the proximity of forest planting to waterbodies, as well as management of wilding tree spread into wetlands and significant natural areas to ensure that replanting does not have a significant adverse effect on these environments.

General conditions

69. Where forestry activities are permitted they must comply with a number of general conditions which manage effects which are common to all or most of the activities, and ensure these effects are not significant. These conditions relate to:
 - a) noise;
 - b) the discharge of dust;
 - c) management of critical or threatened birds within forests;
 - d) fuel storage and discharge;
 - e) management of fish spawning habitat;
 - f) indigenous vegetation clearing and disturbance; and
 - g) slash traps¹¹

Changes to the Proposal following public consultation

70. Following consultation, MPI engaged extensively with the Stakeholder Working Group. Additional council and eNGO representatives joined the group following consultation to ensure a balanced perspective was provided.
71. MPI also engaged directly with Local Government New Zealand, councils, forestry sector representatives, eNGOs and others to develop solutions to

¹¹ Slash trap is a structure for the collection of large woody debris, or 'slash', in the bed of a river and adjacent land.

issues raised during consultation¹². Iwi were also invited to engage in this process, however, there was a limited response.

72. Research was commissioned to ensure that the proposal is led by science and good practice. Subject Matter Experts were contracted to help improve tools like the ESC and the fish spawning indicator.
73. Revisions to the NES-PF include:
 1. modifying the ESC to make it more stringent, as described previously;
 2. improvements to the fish spawning indicator with regards to spawning periods and species;
 3. allowing councils to implement a greater degree of flexibility for appropriate management action for sensitive receiving environments and historic heritage (more on this below);
 4. all of the forestry activities had conditions updated based upon stakeholder feedback during consultation^{13,14}; and
 5. existing voluntary setbacks from surface waterbodies have been retained where they are larger than the minimum requirement under the NES-PF to protect established riparian vegetation.
74. The revised approach that allows for more stringent rules to prevail over the NES-PF when necessary to give effect to the NPS-FM, the NZCPS, the National Environmental Standard for Sources of Human Drinking Water, and certain matters covered by section 6 of the RMA, is necessary to ensure the NES-PF:
 1. does not conflict with councils' RMA obligations;
 2. maintains or improves environmental outcomes; and
 3. does not permit activities which result in significant adverse effects on the environment.
75. There are also safeguards in place to ensure that councils demonstrate why more stringent rules than the nationally accepted (and thoroughly tested) standards for plantation forestry are required. In particular, any new rules must be tested under section 32(4) RMA, which requires councils to examine why a rule more stringent than NES-PF conditions is justified in the particular context of the region and district.
76. Consequently, councils must demonstrate why more stringent provisions are required, and industry will still benefit from reduced plan advocacy costs as the NES-PF rule set will provide a starting point to assess any proposed provisions.
77. The original policy proposal was to permit the use of genetically modified trees where there was approval under the Hazardous Substances and New

¹² Outlined in the attached summary of submissions report.

¹³ Further detail on updates is provided in the summary of submissions.

¹⁴ Additional advice on wording has been sought from forestry and council stakeholders, and Crown Law have provided legal advice on the construction of conditions.

Organisms Act 1996 (HSNO). Concerns about this were raised by submitters

78.

Areas of ongoing stakeholder concern

79. Local government and eNGOs, may continue to raise concerns related to:
1. the removal of autonomy from councils (addressed through councils' ability to apply stringency in certain situations);
 2. permitted activity approach resulting in suboptimal environmental outcomes (the effectiveness of the rules in mitigating environmental effects has been independently assessed and endorsed); and
 3. application of the RMA's effects based framework to a sector-based National Environmental Standard (many council plans also use sector specific rules).

Evaluation of proposal

80. The cost-benefit analysis¹⁵ compares the expected economic impacts of the NES-PF with a status quo scenario of what would happen without the implementation of an NES-PF.
81. The cost-benefit analysis indicates that the implementation of the NES-PF would have a marginal positive benefit (1.06 ± 0.13). While this benefit is not significant, the forestry sector have agreed to these rule changes noting that some of the costs associated with this proposal are a small price to pay for the additional certainty and consistency that will be achieved under the NES-PF. Industry representatives also recognise the importance of the ongoing social licence to operate, which is provided by the NES-PF.
82. In addition, there are many benefits to the NES-PF that are excluded or are assigned low values in this analysis, such as environmental benefits. An assessment of environmental effects report confirms that the NES-PF will maintain or improve environmental outcomes associated with plantation forestry

¹⁵ Prepared as part of the requirements of section 32 of the RMA.

activities across New Zealand. The assessment confirms that permitted activity conditions will not allow significant adverse effects on the environment, noting the impact of genetically modified tree stock has not been assessed, as the relevant matters are considered by the EPA when considering applications.

83. The regulatory impact statement contains more detail on the assessment of options and benefits and is attached.
84. Review by an independent planner confirms that the draft rule set will overall be beneficial for the plantation forestry sector, and meets the objectives of the RMA. Review was also commissioned from an independent expert who found that, from a forester's perspective, the rule set achieved the stated policy objectives. Both reviewers suggested some alterations for clarity that have been incorporated into the revised NES-PF rules.
85. An exposure draft of the NES-PF regulation will be released prior to gazettal, and MPI will subsequently undertake targeted consultation with councils, forestry and eNGO stakeholders to ensure the drafted regulation achieves the policy intent. This is planned to occur over a six to eight week period between December 2016 and February 2017. Feedback from the exposure draft process would be used to make minor and technical changes to the NES-PF regulation before it is gazetted in the first quarter of 2017.

Review period

86. We propose that the conditions associated with this NES be initially reviewed after three years for implementation, and subsequently every five years to ensure that:
 - a) good forest management practice requirements are being achieved;
 - b) the associated risk assessment tools incorporate advances in science and technology; and
 - c) permitted activity conditions reflect advances in what is considered good management practice.

Departmental Consultation

87. The following departments and agencies have been consulted on this paper and their views are reflected:
 1. Ministry of Health;
 2. Te Puni Kokiri;
 3. Ministry of Business, Innovation and Employment;
 4. Department of Conservation (DOC);
 5. Heritage New Zealand Pouhere Taonga;
 6. Department of Culture and Heritage;
 7. Treasury; and
 8. Crown Law Office.
88. DOC supports the promulgation of a National Environmental Standard that provides for a more standardised set of rules for managing the effects of plantation forestry. In particular the Department supports the use of risk

management tools in the NES-PF particularly the amended Erosion Susceptibility Classification and the fresh water fish spawning calculator.

89. DOC is of the strong view that it is most appropriate to address wildings issues as part of afforestation planning and supports the use of standardised tools to help manage this risk. The Department notes that the science behind and development of these tools is progressing quickly. The wilding tree calculator, which is proposed to be used as part of the NES, is likely to be improved or superseded. DOC strongly supports the recommendation that the NES-PF is reviewed 3 years after it comes into force.
90. DOC supports the inclusion of the proposed minimum riparian setbacks in the NES-PF and the ability for Councils to impose more stringent rules to address the National Policy Statement: Freshwater Management and section 6 matters of national importance.
91. DOC will continue to work with MPI in the development of the NES-PF to ensure the provisions of the NES are as effective as possible.
- 92.
- 93.
94. The following departments have an interest in the paper and have been informed:
1. New Zealand Transport Agency;
 2. Department of Internal Affairs;
 3. Department of Prime Minister and Cabinet; and
 4. New Zealand Defence Force.

Financial Implications

95. If Cabinet agrees that the proposed regulations should proceed, there will be ongoing costs to the Ministry for the Environment and Ministry for Primary Industries for:
- a) initial support for local government to implement the NES-PF;
 - b) monitoring local government implementation of the NES-PF;
 - c) updating tools as new information becomes available; and
 - d) evaluating the effectiveness of the NES-PF in achieving its objective.
96. The costs of these activities will be absorbed within baseline expenditure.

Legislative Implications

97. The Parliamentary Council Office has been consulted. The proposed standard will be developed as a regulation made by the Governor-General, by Order in Council.

Regulatory Impact Analysis

98. A Regulatory Impact Statement (RIS) is attached to this paper. The Ministry for the Environment and Ministry for Primary Industries confirm that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation requirements, have been complied with. A draft version of the RIS was circulated with the Cabinet paper for departmental consultation.
99. The RIS includes an analysis of the costs and benefits, options for achieving the objective, and the basis for deciding that the NES is the most appropriate regulatory tool. Two independent reviews of the quality of the proposed rules from the perspective of foresters and planners were also commissioned.
100. The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement with the participation of the MPI Regulatory Impact Analysis Panel. The reviewers consider that the information and analysis summarised in the RIS meets the QA criteria.
101. The proposals are based on extensive and in-depth analysis and consultation and will be supported by an ongoing monitoring and review process. The status quo and the impact analysis for the preferred option in particular could have been set out more concisely, but the case for preferring the NES-PF option is clearly and convincingly made.

Recommendations

102. The Minister for the Environment and the Associate Minister for Primary Industries recommend that the Cabinet Economic Growth and Infrastructure Committee:

1. **Agree** that there is a need for national regulatory consistency in plantation forestry to ensure the maintenance or improvement of environmental outcomes.
2. **Note** that a proposed national environmental standard has been publicly notified and consulted in accordance with the Resource Management Act 1991 (RMA).
3. **Invite** the Minister for the Environment and the Associate Minister for Primary Industries to instruct the Parliamentary Counsel Office to draft a National Environmental Standard for Plantation Forestry (NES-PF).
4. **Agree** that the objective of the NES-PF is to maintain or improve the environmental outcomes associated with managing plantation forestry activities nationally, and to increase efficiency and certainty in the management of plantation forestry activities under the RMA.
5. **Agree** that the NES-PF will provide a consistent planning framework for 8 main forestry activities (mechanical land preparation, afforestation, earthworks, forestry quarrying, river crossings, pruning and thinning to waste, harvesting, and replanting).
6. **Agree** that each of these activities be made *permitted* activities and will not require resource consent when carried out in accordance with specified conditions that require foresters to appropriately manage the adverse environmental effects of these activities.
7. **Agree** that the permitted activity rules and conditions will incorporate:
 - i) Standards that avoid, remedy or mitigate environmental effects;
 - ii) Requirements for management plans for higher risk forestry activities (harvesting, earthworks, quarrying) that will require forestry operators to identify and manage site-specific effects and risks, and provide this information to councils; and
 - iii) Risk management tools that indicate the relative risk of erosion, spread of wilding conifers and effects on fish spawning as a result of the main forestry activities.

8. **Agree** that the main forestry activities that fail to meet permitted activity conditions will require resource consent under one of three activity statuses:
 - i) *controlled* activity status where council oversight is required to ensure that the risks of the activity are appropriately managed;
 - ii) *restricted discretionary* activity status where the risks of the activity are higher and there is potential for significant adverse effects on the environment; and
 - iii) *discretionary* activity status where it's not possible to predict what matters a council will need to consider when deciding whether to grant consent.
9. **Agree** to allow territorial authorities and regional councils flexibility under the NES-PF to manage nationally important resource management issues and unique and sensitive receiving environments.
10. **Agree** that this flexibility will include allowing RMA rules and consents to be more stringent than the NES-PF for the purposes of:
 - i) giving effect to the National Policy Statement for Freshwater Management, the National Environmental Standard for Sources of Human Drinking Water, and the New Zealand Coastal Policy Statement; and
 - ii) recognising and providing for section 6(a)-(c) of the RMA.
11. **Agree** that local flexibility will also be provided by excluding certain activities and effects from the NES-PF, including but not limited to the effects on cultural and historic heritage, which will allow regional and district plan rules to continue to manage those activities and effects. Other effects not covered by the NES-PF are managed locally.
12. **Agree** that the Minister for the Environment and Associate Minister for Primary Industries approve the final details of planning control terms and conditions and any other changes required to give effect to the policy in this paper.
- 13.
14. **Note** that any changes will be reported to the Cabinet Legislation Committee when seeking approval for the regulations to be signed by the Governor General by "Order in Council".
15. **Agree** to publication of the cost benefit report on the proposed NES-PF and the evaluation of effectiveness on environmental outcomes, subject to minor editorial changes as agreed by the Minister for the Environment and the Associate Minister for Primary Industries.

16. **Agree** that if Cabinet agrees to the recommendation of this paper the Minister for the Environment and the Associate Minister for Primary Industries will publicly release this paper (with any appropriate redactions), including Cabinet decisions and any Annexes including the Regulatory Impact Statement, to meet statutory requirements.
17. **Note** that MPI will develop a monitoring and evaluation framework, against which the effectiveness of the NES-PF in meeting its policy objectives can be assessed.
18. **Agree** to review the effectiveness of implementation and the regulations, if required, for the NES-PF initially after three years, with a second wider review to evaluate the effectiveness of the overall NES-PF no later than 5 years after gazettal.

Authorised for lodgement

Hon Dr Nick Smith
Minister for the Environment

Hon Jo Goodhew
Associate Minister for Primary Industries