



OIA15-011

OFFICIAL INFORMATION REQUEST

I refer to your official information request of 1 July regarding the interpretation of the export provisions of the Forests Act in relation to swamp kauri.

After clarification from you about your request, it was agreed with you that MPI would provide:

- documents, images and internal correspondence from specific instances where the status of a product has been in doubt;
- internal correspondence where the definition of a finished product has been discussed and conclusions drawn;
- the training manual Ministry for Primary Industries' officials use as part of the process to warrant Forestry Officers under the Forests Act; and
- official advice (aide memoires and briefings) sent to the Minister during this time period.

Following the release of my decision last week in reply to your request, I am providing you with copies of the following documents:

- four specific examples where the status of a swamp kauri product has been in doubt and conclusions drawn (labelled 1a, 1b, 1c and 1d);
- a copy of the Indigenous 'Timber and Timber Products Export Procedures Manual for Forestry Officers: MPI andASUREQuality';
- AM13-170 (30 August 2013);
- AM13-799 (9 May 2014);
- AM13-809 (15 May 2014);
- B14-354 (5 February 2015); and
- B14-399 (18 February 2015).

In relation to the four examples where the status of a swamp kauri product has been in doubt, I would like to clarify the resolutions that were reached on each of these matters:

- 1a: most of the proposed export consignment was rejected. Rejected products were further processed, re-submitted for approval, and approved, at a later date on the same ITE form;
- 1b: the consignment in question was not given an approval for export;
- 1c: these table tops were never submitted for export approval. The correspondence released followed a sawmill visit and enquiries made by the sawmiller as to whether the table tops would meet a finished product definition; and
- 1d: the slabs in question were not given an approval for export.

The Ministry for Primary Industries has decided not to release information that could be used to identify natural persons. The information has been withheld under section 9(2)(a) of the Official Information Act to protect the privacy of natural persons. Some information is also withheld under section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions. The Ministry is satisfied that in the circumstances of this case, the withholding of this information is not outweighed by other considerations which render it desirable in the public interest to make the information available.

You may be interested to know the Ministry for Primary Industries (MPI) has proactively released a large amount of information on swamp kauri on the MPI website here: <http://mpi.govt.nz/exporting/forest-products/wood-and-wood-products/swamp-kauri>. This OIA release, with your contact details redacted, will be published on the website.

You have the right under section 28(3) of the Official Information Act to request that an Ombudsman investigate and review this decision to withhold information. A request must be made in writing to:

The Ombudsman
Office of the Ombudsmen
PO Box 10 152
WELLINGTON

I trust this information is helpful to you.

Yours sincerely



Craig Trotter
Director (Acting) Spatial, Forestry and Land Management

Out of Scope

From: s 9(2)(a)@asurequality.com>
Sent: Tuesday, 11 March 2014 12:44 p.m.
To: s 9(2)(a)
Cc: s 9(2)(a)
Subject: Some images taken from the inspection yesterday at Mixport
Attachments: Mixport inspection 10 March 2014.doc

Good day s 9(2)(a)

As discussed yesterday over the phone, please find the attached word document regarding the above subject.

For your information and reference.

Kind Regards,

s 9(2)(a)

Level 1 DHL Building 4 Manu Tapu Drive | Mangere | Auckland 2022
PO Box 107037 | Auckland Airport | Manukau 2154 | New Zealand

s 9(2)(a)

Global experts in food safety and quality | www.asurequality.com



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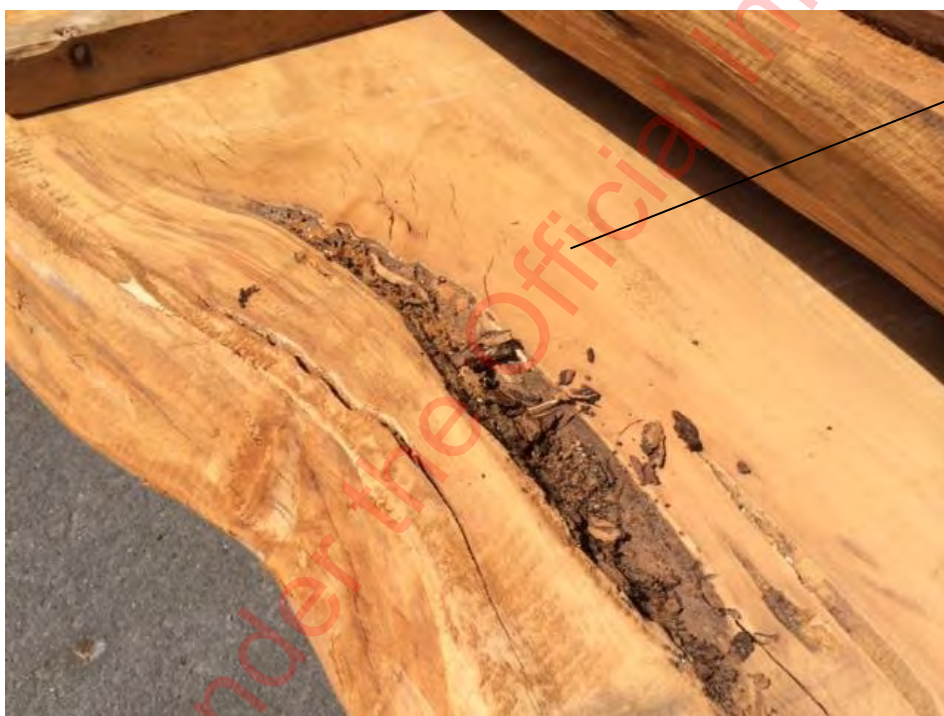
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Sanding
done only
on this part
(close to the
edges) –
also
observed on
other table
tops



Dangling/broken
part of the table
top



Smooth top
surface –
could have
been passed
if not for the
loose inner
bark

These images below are from the same 'finished' table tops barely distinguishing the top or/from the bottom



Out of Scope

From: § 9(2)(a)
Sent: Tuesday, 29 May 2012 8:25 a.m.
To: Ancient Kauri Kingdom
Cc: § 9(2)(a)
Subject: Finished product
Attachments: first-consig-to-italy.jpg; historical.pdf; china-consign.jpg

Hi § 9(2)

I have also attached some old pics of a consignment of coffee tables. In the crate is truly a finished product and they have been packed with care so to avoid damage in transit.

Also attached are the pictures of the consignment I saw at your workshop (first-consig-to-italy.jpg). Loose woody material was been removed, the finish is smooth looks like its been sanded with at least 100 grit (you'd know exactly) and with a layer of wax or oil would come up ok and wouldn't be out of place in a furniture store in NZ. Minimal machining marks are still evident which we're not that happy with but this is the absolute minimum we would expect as a finished product.

china-consign.jpg is what was seen yesterday at philmores. A minimal amount of finishing has occurred, grinder marks are still very evident and the finish is rough (40-60grit?). No finishing had been undertaken on the the underside of two of the slabs and not all loose woody material had been removed.

See you Friday

§ 9(2)



Released under the Official Information Act 1982

10/02/2012 11:11

1982





IF3-19



IF3-20



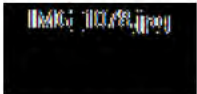
Out of Scope

From: s 9(2)(a)
Sent: Friday, 30 March 2012 9:18 a.m.
To: s 9(2)(a)
Subject: Finished product

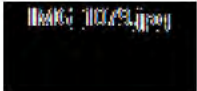
Hi s 9(2)

A recap on my site visit yesterday,

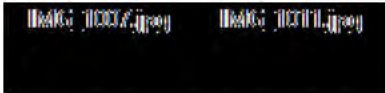
No dry rot, soil or humus material or any loose material. It may be that edges have to be squared off to remove dry rot and loose material, machining marks removed. The following pic was getting close however in addition to what I said during the visit the end would need to be squared off



While the pic isn't ideal the final table top pic is the minimum standard off what the tops should look like, the edges should be a similar finish (while retaining the natural look required for your market)



Below examples of an export consignment of table tops MAF considered finished product



Note the removal of dry rot, soil and humus residue and polished to a high standard while still retaining the natural look of the wood.

s 9(2)(a) | Programmes Advisor

Forestry and Land Operations | Ministry of Agriculture and Forestry | PO Box 503 | Whangarei 140 | New Zealand

s 9(2)(a) Web: www.maf.govt.nz



29/03/2012 08:49

Released under the Official Information Act 1982

29/03/2012 09:07



Released under the Official Information Act 1982

10/02/2012 11:10



Released under the Official Information Act 1982

10/02/2012 11:11

Out of Scope

From: § 9(2)(a)
Sent: Tuesday, 22 November 2011 2:17 p.m.
To: § 9(2)(a)
Cc: § 9(2)(a)
Subject: RE: Re: Kauri export to Italy from Ancient Kauri Kingdom [BC]
Attachments: P1060401.JPG; P1060395_1.JPG; P1060396_1.JPG

Good work § 9(2)(a)

I have telephoned the exporter - § 9(2)(a) from Ancient Kauri Kingdom. He said he could not give me assurance that those 3 slabs are from a stump or a root, and conceded that they are most likely from a log. § 9(2)(a) assertion was that the flitches are finished products -namely "rusticated table tops".

I stated that because the timber is rough sawn timber, they by definition cannot be a finished products, so I cannot approve these flitches for export.

Finished or manufactured indigenous timber product—

(a) *Means any indigenous wood product that has been manufactured into its final shape and form and is ready to be installed or used for its intended purpose without the need for any further machining or other modification; and*

(b) *Includes a complete item or a component of an item (whether assembled or in kitset form) such as joinery, furniture, toys, tools, and household utensils, household fixtures such as rails and toilet seats, ornaments such as picture frames and carvings, and similar items; **but***

(c) ***Does not include dressed or rough sawn timber, mouldings, panelling, furniture blanks, joinery blanks, building blanks, or similar items:***

I suggest that we advise AKK and the export agent that the 3 flitches in question must be removed from the consignment before it can be approved.

Kind regards

§ 9(2)(a) Senior Programmes Adviser
 Sustainable Programmes |
 Ministry of Agriculture and Forestry | Te Papa Tipu Innovation Park | PO Box 1340 | Rotorua 3040 | New Zealand
 § 9(2)(a) | Web: www.maf.govt.nz

From: § 9(2)(a) @asurequality.com]
Sent: Tuesday, 22 November 2011 12:18 p.m.
To: § 9(2)(a)
Cc: § 9(2)(a)
Subject: [Requires Classification] Fwd: Re: Kauri export to Italy from Ancient Kauri Kingdom

>>> § 9(2)(a) 22/11/2011 12:10 p.m. >>>
 Hi § 9(2)(a)

I did the inspection of the Kauri this morning. I have some concern with this consignment.

One of the slabs is about 5.09 meters, the other one is about 5.07 m, and another one that we measured about 4.97 m. It's in bundle so I cannot see the whole surface of the slabs. Because of that I cannot look clearly on the grain.

I spoke with the freight forwarder not to load them and await for my advise.

I attached photos. The first photo would be the 5.09 m, 2nd photo is the 5.07 m and the last photo the 4.97 m. These are just the 3 measurements we took for obvious reason but for sure there are some more slabs more than 3 meters (as shown in the photo). I used the red folder and the blue book as point of reference.

It would be great if we can come up with a course of action here. I will advise the exporter & their agent (Advanced Customs) once we agreed on a plan to take from here.

I would appreciate your reply.

Thank you & regards

s 9(2)(a)

s 9(2)(a)

Auditor - Forestry

Audit & Inspection Services

AsureQuality Limited

59 Richard Pearce Dr, Airport Oaks, Auckland, NZ

PO Box 107037, Manukau 2154, NZ

s 9(2)(a)

@asurequality.com

Freephone: 0508 00 11 22

www.asurequality.com

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STU

806

210

AXGR

CSLL

118

22G

MAX. GROSS

30,480

67,200

TARE

2,040

4,500

NET

28,440

62,700

CUL. CAP.

33.2

1.170



GENSTAR
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California,
U.S.A.

s 9(2)(a)



GENSTAR
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San Francisco,
California,
U.S.A.

2200x1000x75
8

2200x1000x100
8

2200x1000x75
2

2200x1000x75
11

2200x1000x75
11

1784 68211587

AM13-170

Ministry for Primary Industries
Manatū Ahu Matua



Aide-memoire:

From: Aoife Martin
Director Forestry and Land Operations

Contact s 9(2)(a)

To: Hon. Jo Goodhew
Associate Minister for Primary Industries

CC: Hon. Nathan Guy
Minister for Primary Industries

Date: 30 August 2013

Decision on Milling Statement Application 7 00 01877 to mill swamp kauri excavated from the property s 9(2)(a)

1. The Ministry for Primary Industries (MPI) is advising you of a recent decision it has taken to refuse the approval of a milling statement. s 9(2)(a) submitted an application for a milling statement to MPI, with the intention of milling swamp kauri logs extracted from their land.
2. Part 3A of the Forests Act (1949) governs the sustainable harvest of indigenous forest on privately owned indigenous forest land. Indigenous forest land is land wholly or predominantly under the cover of indigenous flora.
3. The Act also prohibits the milling of indigenous timber from an area of land not subject to a registered sustainable forest management plan, permit or a personal use approval.
4. However, the Act does contain a provision that allows trees to be milled that are salvaged from land that is **not** indigenous forest land. It is under this provision that swamp kauri from the Far North is milled. While it remains possible to extract swamp kauri from indigenous forest land the act prohibits its milling therefore reducing its economic value.
5. About five years ago, s 9(2)(a) began to harvest swamp kauri logs from land belonging to s 9(2)(a)
6. The Northland Regional Council, who became aware that the harvesting was occurring on an indigenous wetland, stopped the operation as disturbance of an indigenous wetland is not a permitted activity under the Resource Management Act. The council did not issue a consent but did require that the wetland be restored.

Security Level – In Confidence

7. The logs previously harvested have remained on the s 9(2)(a) property and are slowly rotting.
8. In October 2012, s 9(2)(a) approached MPI for approval to mill the logs. At the time, MPI was unsure of the status of the land from which the logs were harvested. s 9(2)(a) was therefore given a milling statement application form. In August 2013 the milling statement application was received from s 9(2)(a).
9. During the approval process, it was established that the swamp kauri logs had actually been extracted from land that qualified as indigenous forest land. As such, the application was declined.
10. s 9(2)(a) was notified of MPI's decision via phone and email. There was no negative reaction to this decision.
11. In response, s 9(2)(a) has stated verbally they will sell or donate all of the logs for the purpose of carving. The Forests Act places no restrictions on the logs being used for this purpose. MPI has reiterated to s 9(2)(a) verbally, that the logs cannot however be milled.

Minister / Minister's Office

Seen / Referred

/ /2013

AM 13-799

Ministry for Primary Industries
Manatū Ahu Matua



From: Aoife Martin
Acting Deputy-Director General
Regulation and Assurance

Contact s 9(2)(a)

To: Hon Nathan Guy
Minister for Primary Industries

Hon Jo Goodhew
Associate Minister for Primary Industries

Date: 9 May 2014

Overview of MPI processes relating to the auditing and monitoring of swamp kauri under the Forests Act 1949

1. The purpose of this aide-memoire is to provide you with information relating to the processes that the Ministry for Primary Industries (MPI) has in place to ensure that swamp kauri activity is compliant with the Forests Act 1949. This is in light of the recent media interest into the industry.
2. "Swamp kauri" refers to kauri logs that have been buried and preserved in swamps for anywhere between 800 and 60000 years. The timber is valuable particularly when exported. Operators and retailers have been extracting and selling swamp kauri domestically for more than 30 years.
3. The extraction of the resource and the requirement to ensure such extraction occurs in a sustainable manner is administered under the Resource Management Act 1991 by regional councils. The milling and export of swamp kauri is administered under the Forests Act 1949.
4. Under the Forests Act, the milling and/or export of swamp kauri is prohibited if it has been excavated from indigenous forest land. Nor can it be exported unless it meets the definition of a finished product, component of a finished product or is from stump or root material.
5. While MPI makes every effort to ensure that indigenous timber products being exported satisfy the requirements of the Forests Act, it is not possible to police, or restrict what happens to swamp kauri products once they leave New Zealand. Therefore it is possible that further processing could occur after the product arrives at its destination.

6. An increase in demand internationally, particularly from China has encouraged new operators to enter the industry leading to a significant upsurge in swamp kauri activity in Northland. This has resulted in increased public interest in how MPI monitor and regulate the export of indigenous timber as per the requirements of the Forests Act.
7. To ensure that the provisions of the Forests Act are being met MPI undertakes the following initiatives:
 - Regular inspections of sawmills registered to mill indigenous timber. Additionally, MPI routinely visits excavation sites to ensure the source of the timber does not come from indigenous forest land.
 - Requirement that exporters notify MPI of their intent on to export swamp kauri, 10 days prior to export.
 - The source of all swamp kauri exports is verified prior to export.
 - AsureQuality completes a physical inspection of the export consignment to ensure it complies with the definition of finished product under the Act.
 - NZ customs alert in place if consignments are detected that may not be compliant with the Act.
 - Comprehensive training material prepared to assist all warranted forestry officers (MPI and AsureQuality) to undertake inspections of export consignments.
 - Factsheets have been prepared for the swamp kauri sector detailing the export and milling regulations as per the Forests Act with the aim of improving voluntary compliance.
 - Public information factsheets have been produced detailing MPI's monitoring and regulating procedures relating to the export of swamp kauri.
 - Maintaining regular contact with the Northland Regional Council (NRC) to ensure both MPI and NRC are aware of all swamp kauri excavation sites.

Security Level – In Confidence

8. The recent Third Degree programme on TV3 implied that a swamp kauri product advertised for sale in the United States did not meet the export requirements of the Forests Act. The relevant consignment has been traced and MPI can confirm that the conditions of the Act were satisfied. Further information on this matter will be provided in AM 13-809.

Minister / Minister's Office

Seen / Referred

/ /2014



Aide-memoire:

From: Scott Gallacher
Deputy Director-General, Regulation and Assurance
for Director-General

Contact: Aoife Martin, Director Spatial, Forestry and Land Management
s 9(2)(a)

To: Hon Jo Goodhew
Associate Minister for Primary Industries

Date: 15 May 2014

**Response to matters raised during the item on the swamp kauri industry
broadcast by the TV3 current affairs programmed 3rd Degree**

1. You have asked for information relating to two issues arising from the broadcast of the 3rd Degree programme on 30 April 2014. The two matters relate to:
 - a. The legality of the swamp kauri advertised by an American company that looked wet and unfinished;
 - b. MPI processes in place to monitor reference to Oravida in Official Information Act (OIA) responses or media requests.

Legality of timber

2. The 3rd Degree programme featured an image sourced from an American website depicting a swamp kauri table top that was advertised as being freshly unloaded with the moisture of the New Zealand peat bogs still fresh on the surface of the slab. The image showed water patches on the surface of the timber.
3. You have expressed concern that this timber was not compliant with the export provisions as specified in section 67C of the Forests Act 1949 because it was advertised as being still wet and unvarnished.
4. MPI can confirm that the table top shown was exported to the USA company Ancientwood Limited by the New Zealand company Ancient Kauri Kingdom Limited. Ancient Kauri Kingdom Limited requested that MPI inspect the product to ensure it met the definition of a table top prior to export.

Security Level – In Confidence

5. The inspection occurred in August 2012. The inspecting forestry officer was satisfied the tabletop was in its final shape and form and ready to be used for its intended purpose as a finished component of a table (as per the requirements of the Forestry Act). Attached is an image that MPI took during the inspection and a copy of the image of the product presented for sale.
6. At the time MPI was satisfied, and remains satisfied, that the timber met the export requirements of the Forest Act 1949.
7. We consider that the depiction of the timber on the Ancientwood Limited website was done for promotional purposes only and that the moisture apparent on the timber was likely rain water. Further the varnishing or coating of a timber product prior to export is not considered to be a requirement that must be satisfied under the export provisions of the Act. This is because varnishing is considered to be part of the preservation process rather than the manufacturing process and is therefore not captured by the definition of a finished product under the Act.

Oravida and the swamp kauri

8. The programme also referenced information released under the OIA that Oravida Kauri Limited had exported one consignment of swamp kauri to China in 2013.
9. The OIA response referred to was provided to ^{s 9(2)(a)} the Northland Environmental Protection Society. The material (export consignment notices) was released on April 17 2014 under OIA13-370. A copy of the material was provided to your office for review prior to its release.
10. In addition to this, on the afternoon that the 3rd Degree programme was broadcast MPI received an OIA request ^{s 9(2)(a)} seeking information specifically relating to Oravida. Your office was advised of this matter. The OIA has yet to be finalised and, as part of our standard processes, will be provided to your office for a review before it is released.
11. Further to this, MPI is also completing an assessment of all swamp kauri OIA requests in terms of their explicit relevance to Oravida. The result of this assessment will be captured in the Ministerial cover note that accompanies OIA responses provided for your review.

Minister / Minister's Office

Seen / Referred

/ /2014





1.

Distribution
Minister
Minister's Advisor
Minister's Office

Ministry for Primary Industries
Manatū Ahu Matua



05 February 2015

Document Number: B14-354

Proposed review of the management regime for the utilisation of swamp kauri

Purpose:

To seek your approval to initiate a review of the management regime for the utilisation of swamp kauri.

Minister	Action Required:	Minister's Deadline
Associate Minister for Primary Industries	Note and agree the recommendations contained in the briefing.	When convenient
Cc Minister for Primary Industries		

Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
Responsible Manager	Scott Gallacher	Deputy Director General	s 9(2)(a)	s 9(2)(a)
Author	Aoife Martin	Director Spatial, Forestry and Land Management	s 9(2)(a)	s 9(2)(a)

Key Messages

1. MPI is seeking your approval to commence a review of the management regime that governs the utilisation of swamp kauri.
2. This review is in response to increased public concern about perceived unrestricted access to the resource, the potential environmental impacts of excavation and extraction, and the impact that the recent growth in the swamp kauri export market has had on the domestic sector. MPI's view is that recent levels of public engagement on this issue are unlikely to abate and some form of intervention or public education may be warranted.
3. You have previously signalled that this review is one of your priorities for the current term of government.
4. MPI also considers that this review provides an opportunity to assess the appropriateness of some of the regulatory measures that apply across the wider indigenous forestry sector.
5. Should you agree to start the review process at this time, the first stage will be to confirm the scope of the review and to establish its Terms of Reference. MPI will provide you with a draft Terms of Reference in late February.

Recommendations

6. MPI recommends that you:

- a) **Note** that public opposition to the utilisation of swamp kauri continues to be vocal. **Noted**
- b) **Note** that you have previously signalled that reviewing the management of swamp kauri is a priority for you during the current term of government. **Noted**
- c) **Agree** to direct MPI to start the planning and preparatory work for the review. **Agreed / Not Agreed**
- d) **Agree** to discuss the purpose of the review with Minister Smith and to seek his views on scope. **Agreed / Not Agreed**
- e) **Note** that if you agree to start the review process at this time, further advice on the proposed scope and Terms of Reference for the review will be provided in late February. **Noted**

Scott Gallacher
Deputy Director-General
Regulation and Assurance
for Director-General

Hon Jo Goodhew
Associate Minister for Primary Industries

/ / 2015

Background

Purpose

7. This briefing seeks your approval to commence a formal review of the management regime that governs the utilisation of swamp kauri. You recently identified this review as one of your priorities for the next three years in the forestry portfolio.

Issue

8. "Swamp kauri" refers to kauri logs that have been buried and preserved in swamps for anywhere between 800 and 60,000 years. The timber is valuable, particularly when exported. Operators and retailers have been extracting and selling swamp kauri domestically for more than 30 years and a viable and valuable export industry has been operating for the past 5 – 10 years.
9. The swamp kauri sector is focused on Northland, although the actual presence of swamp kauri is expected to extend across the upper North Island.
10. In recent years, an increase in demand, particularly from China, has encouraged new operators to enter the industry leading to a significant upsurge in swamp kauri activity in Northland. This has resulted in increased public concerns around the appropriateness and legitimacy of the activity. A local environmental group, the Northland Environmental Protection Society (NEPS) is actively opposed to the utilisation of swamp kauri and is leading much of the local campaigning.
11. Much of the public opposition centres on the perceived unrestricted access to the resource, the environmental impacts of excavation and extraction, and the impacts that recent growth in the swamp kauri export market has had on the domestic sector.
12. In the past three years MPI has received 13 Official Information Act requests and provided 10 Ministerial responses on this matter. The majority of these OIA requests were received by NEPS in 2014. Last year the perceived issues surrounding the swamp kauri management regime also featured in national press articles and on television. The most recent Ministerial correspondence has gone as far as claiming that the regulatory regime is corrupt.
13. Despite intense media and public scrutiny over MPI's administration of the swamp kauri industry in recent years, there has been no evidence to suggest that MPI has not discharged its legislative responsibilities appropriately. Despite this, there is no sign that the public opposition will lessen and MPI considers that a more formal and structured review of the regime is warranted.

Context

14. The regulatory regime that governs the utilisation of swamp kauri is complicated. Many of the concerns that have been raised with how swamp kauri is managed are beyond MPI's current area of legislative responsibility.
15. The extraction of the resource and the requirement to ensure such extraction occurs in a sustainable manner is administered under the Resource Management Act 1991 by regional councils. The milling and export of swamp kauri is administered under the Forests Act 1949. The Forests Act requires that saw mills must record the volume and source of any swamp kauri that it processes, while the export prohibitions prevent the export of swamp kauri products unless they have been processed to a finished product or originate from stump or root material.
16. MPI makes every effort to ensure that indigenous timber products being exported satisfy the requirements of the Forests Act. This includes warranted forestry officers inspecting all notified exports before they leave New Zealand. If MPI is not satisfied that the export provisions have been met then the export consignment cannot leave the country until such assurance is provided.
17. However, it is not possible to police or restrict what happens to swamp kauri products once they leave New Zealand. It is possible that further processing could occur after the product arrives at its destination and MPI is aware of instances when this has occurred. Much of the criticism levelled at MPI is that product has been exported which has then been further processed in the overseas market, which implies that it did not meet the finished product definition under the Forests Act.
18. Appendix 1 provides an overview of the full suite of work that MPI undertakes with respect to swamp kauri to support its regulatory responsibilities under the Forests Act.

Proposed review

19. Continued public opposition to the utilisation of swamp kauri can be expected throughout 2015. MPI considers that a formal review of the regulatory system is warranted to confirm that we are meeting our existing legislative responsibilities but also to assess whether the management regime is fit for purpose. As part of MPI's preliminary priorities discussion with you prior to Christmas you indicated your support for such a review, ^{§ 9(2)(g)(i)}
[REDACTED]
20. MPI is now seeking your approval to formally commence this review. Should you agree with this recommendation the first stage will be to confirm the scope of the review and to establish its Terms of Reference. As part of this preparatory stage we would like to better understand your drivers for the review, as they will influence its scope.

Scope

21. There are a number of considerations with respect to the scope of the review which MPI is considering:
 - a. Whether the review be limited to only MPIs responsibilities under the Forests Act or if it should extend to cover all aspects of the management regime taking account of the full suite of responsibilities that exist under the RMA.
 - b. Whether the review is limited to 'how' we implement the current regime or if it should encompass the wider legislative settings underpinning the regime and their appropriateness. This could have implications for how we address the review findings and will be influenced by whether there is an appetite for legislative change; should the review find that this is required.
22. Following an initial assessment, MPI considers that a comprehensive review of the entire management system is warranted. Anything less is unlikely to address the full suite of public concerns that have been raised.
23. MPI has had an initial conversation with Ministry for the Environment. MfE understands the drivers for the review and the role of the RMA in the current management regime, but acknowledged that its limited resources are focused on the wider RMA reforms. MfE also advised that as it has not yet given significant consideration to whether Northland Regional Council is discharging its duties appropriately under the RMA, a review into the management of the swamp kauri regime would be beneficial. Despite being responsible for the RMA, which is one of the key pieces of legislation governing the swamp kauri sector, neither MfE nor the Minister for the Environment has been the focus of the public opposition or media attention experienced by MPI on this matter.
24. If you support a comprehensive review then MPI recommends that you raise this issue with Minister Smith and seek his formal agreement that the review includes the relevant responsibilities under the RMA. A letter will be prepared for you to send to Minister Smith on this matter.

Terms of Reference

25. As part of the preparatory phase, consideration will be given to how the review will be conducted and by whom. Options available for consideration include:
- a. Whether the review is lead internally by MPI or an independent external review team. The former is likely to be easier to deliver and less costly as much of the required knowledge and understanding is already available within MPI. However, there may be concerns about integrity and transparency of the review if it is lead internally. As before we will give this further consideration, but the option to publish the review findings would likely address concerns around transparency.
 - b. Whether the review is focused internally on central and local government roles and responsibilities or if it should seek views from stakeholders in the region, including those both opposed to and supportive of the current regime. Opening the review up to the wider community will increase costs and complexity but is likely to support transparency and stakeholder buy-in to the review findings.
26. MPIs preliminary assessment is that the review be lead from within MPI but that it should be externally focused and seek views from stakeholders and the wider community.
27. MPI considers there are two additional benefits associated with delivering this review:
- a. Provides an opportunity to assess the regulatory measures that apply across the wider indigenous forestry sector to ensure that they are enabling sustainable utilisation within appropriate environmental limits.
 - b. Provides an opportunity to better understand the economic contribution that the swamp kauri sector contributes to Northland and regional economic development more generally.

Appendix 1

To ensure that the provisions of the Forests Act are being met MPI with respect to swamp kauri the following process steps are in place:

- Regular inspections of sawmills registered to mill indigenous timber and routine visits of excavation sites.
- Require that exporters notify MPI of their intention to export swamp kauri, 10 days prior to export.
- Source of all swamp kauri exports is verified prior to export.
- AsureQuality completes a physical inspection of the export consignment to ensure it complies with the definition of 'finished product' under the Act.
- NZ customs alert in place if consignments are detected that may not be compliant with the Act.
- Comprehensive training material prepared to assist all warranted forestry officers (MPI and AsureQuality) to undertake inspections of export consignments.
- Factsheets have been prepared for the swamp kauri sector detailing the export and milling regulations as per the Forests Act, with the aim of improving voluntary compliance.
- Public information factsheets have been produced detailing MPI's monitoring and regulating procedures relating to the export of swamp kauri.
- Maintaining regular contact with the Northland Regional Council (NRC) to ensure both MPI and NRC are aware of all swamp kauri excavation sites.

Distribution
Minister
Minister's Advisor
Minister's Office

Ministry for Primary Industries
Manatū Ahu Matua



18 February 2015

Document Number: B14-399

Update on the proposed review of the swamp regime in advance of your meeting with Hon Nick Smith

Purpose:

This briefing responds to your request for additional advice on management of swamp kauri (B14-354 refers), including key facts and figures, perceived problems and our proposal for next steps. ^{Out of Scope}

It also provides some suggested talking points for your meeting with Hon Nick Smith on Thursday 19 February.

Minister	Action Required:	Minister's Deadline
Associate Minister for Primary Industries	Note and agree the recommendations contained in the briefing.	For your meeting with Hon Nick Smith on Thursday 19 February.
CC Minister for Primary Industries		


MPI Officials Attending the Meeting

Aoife Martin, Director Spatial, Forestry and Land Management

Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
Responsible Manager	Aoife Martin	Director Spatial, Forestry and Land Management	§ 9(2)(a)	§ 9(2)(a)
Principal Author	§ 9(2)(a)	Senior Analyst		

Key Messages

1. The level of public interest in the management of the swamp kauri resource has reached a point where officials consider that a formal assessment of the regulatory settings around swamp kauri is justified.
2. While harvesting of swamp kauri is economically beneficial, concerns are being expressed about the environmental impacts associated with extracting the resource and whether regulation is adequate to ensure that use of the resource is sensibly controlled.
3. We recommend that you agree to a formal assessment led by MPI assessing the regulatory regime around swamp kauri, including rules around extraction, milling and exporting.
4. While the outcomes of the review cannot be predetermined, it is likely that if there is a need to change the forestry provisions that manage the sector this could require a legislative change. In contrast changes to regime under the Resource Management Act (RMA) will likely be affected through regional and district plans without the need for any legislative amendment.
5. Out of Scope

6. We recommend that you discuss these issues with Hon Nick Smith at your meeting on 19 February.

Recommendations

7. MPI recommends that you:

- a) **Note** that concerns have been expressed by the public about the management of swamp kauri in Northland

Noted

- b) **Note** that MPI is satisfied that it is implementing the current regulatory settings appropriately

Noted

- c) **Note** that MPI believes that the current regulatory settings may not be optimal

Noted

- d) **Agree** that MPI lead a formal assessment of regulatory settings that impact on swamp kauri

Agreed / Not Agreed

- e) **Agree** to discuss these issues ^{Out of Scope} with the Minister for the Environment at your meeting with him on 19 February.

Agreed / Not Agreed

Scott Gallacher
Deputy Director-General
Regulation and Assurance
for Director-General

Hon Jo Goodhew
Associate Minister for Primary Industries

/ / 2015

Purpose

8. We met with you on 10 February regarding the regulatory regime and management issues surrounding extraction and export of swamp kauri in Northland. You requested further advice particularly on the problem definition, key facts and figures, and the potential scope of a formal assessment (review) of the current management regime.
9. The briefing seeks your agreement to proposed parameters of a review into the management regime of swamp kauri.
10. This briefing also provides talking points (Appendix 1) to support your conversation with the Hon Nick Smith on this issue. Out of Scope

Key facts and figures

11. Swamp kauri is defined as kauri logs that have been buried and preserved in ancient swamps for between 800 and 60,000 years. Over time both the kauri and the swamp have become part of the soil layer. Swamp kauri is not kauri dug up from swamps, but from land that may have been swamp in ancient times.
12. Swamp kauri has been extracted from Northland land for more than 30 years. Mostly it has been converted into high-value furniture.
13. Most swamp kauri is dug up from farmland (estimated at 90% of swamp kauri extraction). It is highly unusual for swamp kauri to be extracted from indigenous land areas¹, and this practice requires consent under the Resource Management Act. The Forests Act prohibits the milling of any such timber unless there is a registered sustainable forest management plan, permit or personal use approval.
14. The resource is spread throughout Northland and Auckland, with known excavation sites located from the Aupouri Peninsula north of Kaitia to Takanini in South Auckland. While there are no known excavation sites south of Auckland, it is probable that swamp kauri occurs over the entire natural kauri range, which extends as far south as Tauranga and Kawhia.
15. Once milled the timber is highly valuable, especially overseas. Unmilled logs are not of commercial value and are sometimes used domestically in carving and small-scale manufacturing such as woodturning.

¹ 'Indigenous land' refers to land with indigenous material growing in it, whether trees, plants or grasses.

16. There are six operators that excavate and export swamp kauri in Northland, and a further three that just excavate. MPI is able to collect information on the size of the sector from sawmilling records. However, this can only ever provide an estimate of part of the total volume excavated, as not all swamp kauri is sent to a saw mill for further processing. MPI is aware of operators that are storing large volumes of swamp kauri with the intention of milling it in the future.
17. Information collected by MPI over the past five years indicates that:
 - a. 37,500 m³ of log volume has been approved for milling. The recovery rate for swamp kauri is estimated to be 50%.
 - b. 6200m³ of log volume was approved for export (including whole stumps, stump timber and finished product).²
 - c. The average value of sawn stump timber is currently \$3000-\$5000/m³.
 - d. The average value of swamp kauri in a high-value finished table is estimated to be \$20,000/m³. However this is a highly variable figure and depends on the artist or manufacturer and the destination.
18. Overseas sales have most recently become dominated by China (approximately 75% of all export trade) with Europe being the second biggest export market. Export volumes steadily increased from 2009 to 2012 then increased significantly again in 2013, and again in 2014. Between 2012 and 2014 export volumes increased seven fold.
19. The volume of swamp kauri still in the ground is unknown. A preliminary assessment made by scientists from Auckland and Waikato Universities is that we cannot assess how much swamp kauri exists in the ground. Operators expect supply to continue for many years, but recognise that they will need to dig deeper to extract it.
20. We are advised that demand is at such a level that supply is the limiting factor.
21. Two regulatory regimes impact on the management of swamp kauri activity:
 - a. The Resource Management Act (RMA) governs excavation and extraction (including requirement to extract in a sustainable manner), with regulatory decisions made by regional and district councils through their planning processes
 - b. The Forests Act governs the milling and export of indigenous timber, with regulatory decisions made by MPI.

Benefits of harvesting swamp kauri

22. Swamp kauri is of high commercial value. While there is some public opposition to its extraction, it is currently providing a healthy economic return to a region that has relatively low levels of economic activity.

² The discrepancy between volumes approved for milling and volumes approved for exporting is explained by operators storing milled timber under cover (where it can be stored indefinitely), and sales to the domestic market.

23. Scientists at universities and crown research institutes are also interested in swamp kauri, because it provides valuable information about soil and climate. They currently rely on the goodwill of operators to secure samples for research purposes. Any review will need to consider how swamp kauri extraction can meet scientific research objectives as well as economic objectives. For example there may be an opportunity to formalise the arrangements the science community currently has with operators.
24. MPI considers that the ideal regulatory regime would support reasonable levels of extraction, milling and export of swamp kauri as an economically and environmentally sound resource.

Issues around utilisation of swamp kauri

25. Recently, public opposition to the extraction of swamp kauri has become vocal and begun to receive more media coverage. Concerns are expressed mainly in Northland itself, often by environmental groups concerned about how and where the resource is extracted. Public concern fits within three themes:
 - a. the environmental impacts associated with extracting the resource, for example that irreversible damage may be done during the extraction process;
 - b. the implications of removing a finite resource, because swamp kauri, like other ground-based resources, is not renewable;
 - c. issues about whether sufficient swamp kauri is made available for use in the domestic market – there is a small industry manufacturing trinkets and furniture. We understand that some operators donate small amounts of timber to local wood turners.
26. Over the last two years, MPI has been under significant scrutiny relating to how we implement the provisions in the Forests Act that control the milling and export of swamp kauri. To date no issues have been identified with how we are fulfilling our current regulatory role.
27. However, the regulatory regime is split between two statutes and is highly complex. There are questions about whether we are regulating and controlling activity at the right points and in the right ways. How the RMA and Forests Act work together to manage swamp kauri is also unclear, and given the two processes are not currently well aligned it is possible that parts of the supply chain may not be well managed.

28. s 9(2)(g)(i)



29. Some of the negative publicity over the last two years has arisen from people claiming that further processing is occurring after the timber leaves New Zealand. While this may occasionally be the case, if the product meets the definitions specified in the Forests Act then there is no justification to prevent its export.
30. The issues with the export provisions in the Forests Act also extend beyond the swamp kauri regime and the justification for these restrictions is routinely questioned by operators in the wider indigenous forestry sector.

Proposed scope of assessment work

31. In light of the current negative publicity, the size of the problem and the impact of two different regulatory regimes, we have given careful consideration to the appropriate scope of a formal assessment of the existing swamp kauri regulation.
32. Extraction of swamp kauri per se is not necessarily a problem. Such extraction is not sustainable in the traditional sense because it is a non-renewable resource. While there are rules in place through regional plans to ensure that wetlands and indigenous forests are protected which protect some swamp kauri from excavation, the application of these rules may require strengthening.
33. An assessment of the regulatory settings is needed so that publically-voiced issues about swamp kauri are addressed satisfactorily while still allowing the economic benefits to local communities to continue.
34. While swamp kauri is currently an issue of concern to some members of the public, there are other 'buried timber' species across New Zealand (e.g. rimu on the West Coast of the South Island). There is a need to ensure there is consistency and a reasonable precedent set by any management regime targeted at swamp kauri.
35. We propose a formal assessment of the regulatory settings, to be led by MPI, which would cover the milling and export regimes run by MPI and the RMA regime around extraction.

Suggested parameters for review


Timeframe	6-8 months – completion with recommendations by end October 2015
Led by	MPI in consultation with MfE, LGNZ
Reporting to	Associate Minister for Primary Industries
Objective	Identify the most appropriate regime to manage the extraction, milling and export of swamp kauri
Consulting with	MfE, LGNZ, Northland Regional & District Councils, pre-identified concerned environmental advocates, industry representatives
Products	Discussion paper (March) followed by recommendations to Minister/s OR fact-to-face consultation with predetermined questions followed by recommendations to Minister/s

36. The review would also examine other regimes that regulate the extraction of valuable material from land in New Zealand – for example, coal, minerals, pounamu. We anticipate being able to draw on at least some of these regimes when recommending change options for regulation of swamp kauri extraction.
37. We recommend a limited consultation outside central and regional government as part of the review, including environmental advocates who have raised concerns up to now, and industry representatives.


Meeting with Hon Nick Smith

38. At your meeting with Hon Nick Smith on 19 February, you will want to discuss:
 - a. the need for a review;
 - b. the scope of the review specifically seeking his support to extend it to include RMA responsibilities;
 - c. the role of MPI in leading the review; and
 - d. the possible outcomes of the review.
39. If the review recommends change to the Forests Act then it could point to some form of legislative change.
40. If the review recommends change to the RMA regime, MPI expects that it would be at the district and/or regional plan level rather than requiring legislative change.
41. Officials believe that an assessment of the current regulatory regimes relating to swamp kauri is justified; and that such an assessment would help to clarify government's objectives and expectations around this resource.
42. MPI has shared the content of this briefing with Ministry of the Environment officials.

Out of Scope




Out of Scope



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APPENDIX 1

TALKING POINTS FOR MEETING WITH HON NICK SMITH


Swamp Kauri

1. There is a level of noise around extraction and export of swamp kauri, which extends to print media (NZ Herald, Northern Advocate) and an item each on TVNZ (*Sunday*) and TV3 (*3rd degree*).
2. MPI has been scrupulous in following up allegations of negligent or improper behaviour by regionally-based staff. There is no evidence of inappropriate decision-making by officials.
3. Is a review desirable? How could officials involve those who have concerns about utilisation of swamp kauri in such a review to address the negative coverage?
4. Do we agree that banning extraction of swamp kauri outright is not the solution? If we do, then the focus needs to be on getting the regulatory regime right. This would be the main focus of the review.
5. Are you supportive of the review addressing the full extent of the swamp kauri management regime?
6. The implications of the review on the extraction side would be at the level of council planning rather than the legislation.
7. We will need a form of communications strategy around the review, so that the public gets consistent messages.

Out of Scope



Out of Scope



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Ministry for Primary Industries
Manatū Ahu Matua



INDIGENOUS TIMBER and TIMBER PRODUCTS EXPORT PROCEDURES MANUAL

for

FORESTRY OFFICERS

MPI and ASUREQUALITY

**ADMINISTRATION OF EXPORT CONTROLS PURSUANT TO
SECTION 67C, Part 3A OF THE FORESTS ACT 1949**

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1. INTRODUCTION

This manual has been prepared for AsureQuality and MPI Forestry Officers involved in the inspections and approvals of indigenous timber products intended for export. It provides operational procedures and references to the relevant provisions, particularly section 67C, Part 3A of the Forests Act 1949 ("Forests Act").

It is to be read in conjunction with the Service Contract between AsureQuality New Zealand Limited and the Ministry of Agriculture and Forestry, particularly Clause 3. *Services and Schedule 1* (refer Appendix 5).

2. RELEVANT LEGISLATION

2.1 DEFINITIONS

The following definitions are from section 2 *Interpretation* of the Forests Act 1949:

Groundline *in relation to any living or dead tree, means the point at the base of the tree where the tree, when standing, commenced or commences to be naturally in contact with the ground*

Finished or manufactured indigenous timber product—

- (a) *Means any indigenous wood product that has been manufactured into its final shape and form and is ready to be installed or used for its intended purpose without the need for any further machining or other modification; and*
- (b) *Includes a complete item or a component of an item (whether assembled or in kitset form) such as joinery, furniture, toys, tools, and household utensils, household fixtures such as rails and toilet seats, ornaments such as picture frames and carvings, and similar items; but*
- (c) *Does not include dressed or rough sawn timber, mouldings, panelling, furniture blanks, joinery blanks, building blanks, or similar items*

Forest produce or forest product *includes trees and other plants and the produce of trees and other plants, and also includes earth, rock, sand, shingle, and minerals when found in or removed from any ... forest land or any other land for the time being administered by the Minister*

Forestry Officer *means—*

- (a) *The chief executive of the Ministry;*
- (b) *Any person appointed as a Forestry Officer under section 11*

Indigenous, *in relation to a species of flora or fauna, means a species that occurs naturally in New Zealand or arrived in New Zealand without human assistance*

Planted indigenous forest *means any indigenous timber trees or tree ferns that have been planted on land that was not indigenous forest land immediately before such planting and was not indigenous forest land immediately before the land was prepared for such planting*

Salvaged timber means—

- (a) Timber from trees that have fallen naturally;
 - (b) Timber from trees that were felled to waste before the 3rd day of July 1989;
 - (c) Stumps remaining from any timber felled before that date;
 - (d) Roots remaining from any timber felled before that date;—
- and **salvaged stump** and **salvaged root** have corresponding meanings

Secretary means the chief executive of the Ministry of Agriculture and Forestry or any person delegated by him or her

Stump means the basal part of a living or dead tree (whether rooted or uprooted), being the roots and that part of the trunk that extends from the groundline to a point (up the trunk) equal to the maximum diameter of the trunk; and, for the purposes of this definition, any remnant of a tree shall be regarded as part of a complete tree (See Diagram in Appendix 1)

Timber—

- (a) means—
 - (i) trees (excluding cuttings, suckers, and shoots); and
 - (ii) woody plants able to be milled; and
- (b) includes branches, roots, and stumps of trees and other woody plants able to be milled, logs, woodchips, wood products, veneer, tree ferns, and tree fern fibre

Tree fern means all species of the families Cyatheaceae and Dicksoniaceae

Trees includes not only timber trees, but also all other kinds of trees, shrubs, and bushes, seedlings, saplings, cuttings suckers, and shoots of every description

Warrant of Authority means designation under the Forests Act 1949 providing Forestry officer status. The warrant must be carried at all times of duty. This is in the form of a warrant of authority card (or warrant of letter) signed by the Director, Forestry and Land Operations

Vessel has the same meaning as in section 2 of the Harbours Act 1950

2.2 EXPORT CONTROLS OF INDIGENOUS TIMBER

Section 67C of the Act sets out the provisions relating to the export of indigenous timber as follows:

67C - Prohibition on export of certain indigenous forest produce

(1) No person shall export from New Zealand indigenous timber, except the following:

- (a) Any grade of sawn beech or sawn rimu (other than wood chips), where the Secretary has stated in writing that he or she is satisfied that the timber has been taken from an area subject to, and managed in accordance with, a registered sustainable forest management plan or registered sustainable forest management permit;
- (b) Any finished or manufactured indigenous timber product, regardless of the source of the timber used in the product;
- (c) Any personal effects;
- (d) Any stump or root, whether whole or sawn, where the Secretary has stated in writing that he or she is satisfied that the timber has been taken from an area subject to, and managed in accordance with, a registered sustainable forest management plan;
- (e) Any salvaged stump or salvaged root, whether whole or sawn, where the Secretary has stated in writing that he or she is satisfied that the timber has been taken from an area that is not indigenous forest land;
- (f) Any tree fern trunk or part of a tree fern trunk, or fibres from a tree fern trunk,—
 - (i) Where the Secretary has stated in writing that he or she is satisfied that the timber has been taken from an area subject to, and managed in accordance with, a registered sustainable forest management plan; or
 - (ii) From indigenous forest land, where the Secretary has, subject to subsection (2) of this section, given his or her prior written approval to the removal of that timber; or
 - (iii) Where the Secretary has stated in writing that he or she is satisfied that that timber is from land that is not indigenous forest and.
- (g) any indigenous timber—
 - (i) from a planted indigenous forest, if that timber is, or is from, a shrub, bush, seedling, or sapling; or
 - (i) other than indigenous timber to which subparagraph (i) applies, if the Secretary has stated in writing that he or she is satisfied that the timber has been harvested from a planted indigenous forest; or
 - (iii) harvested from a forest subject to a forest sink covenant established in accordance with Part 3B.

(2) Before giving approval under subsection (1)(f)(ii) of this section, the Secretary must be satisfied that the area concerned can continue to supply an annual or periodic non-diminishing yield of tree fern trunks in perpetuity.

- (3) *No indigenous timber (other than personal effects and any finished or manufactured indigenous timber products) may be exported from New Zealand—*
- (a) *unless—*
- (i) *a notice of intention to export has been given to the Secretary in a form approved by the Secretary; and*
 - (ii) *the notice of intention includes or is accompanied by a statement of the source of the timber; and*
 - (iii) *the timber has been presented to a Forestry Officer for inspection and he or she has inspected and approved it, and*
- (b) *until the expiry of a period (if any) specified for the purposes of this paragraph in the notice of intention.*

67C subsection (1) specifies that no indigenous timber may be exported from New Zealand unless it fits within the criteria of one of the exceptions listed in subsection (1).

Subsection (3) further stipulates that no indigenous timber other than personal effects or finished/manufactured products may be exported without a prior notice of intention to export. The notice of intention to export must include a declaration of the source of the timber.

The notice of intention to export form is currently the form entitled “MFM3”. The requirement for the Secretary to state in writing that the timber has come from an approved source has been delegated to Programmes Advisors within MPI’s Forestry and Land Operations Directorate. The Programmes Advisors are warranted Forestry Officers.

The approval of a MPI Forestry Officer on the MFM3 form as “Source Confirmed” shall be deemed notice in writing from the Secretary that the timber is taken from an approved source.

Note also under subsection (3) that any/all indigenous timber product(s) must be inspected by a Forestry Officer before being able to be approved for export.

2.3 APPOINTMENT OF A FORESTRY OFFICER

Section 11 of the Act provides for the appointment of Forestry Officers. The Minister and his delegated representative may appoint as a Forestry Officer for the purposes of the Act any person appointed under the State Sector Act 1988 or employed in a State enterprise and may prescribe the functions and powers of a person so appointed. As such, certain employees of AsureQuality are appointed as Forestry Officers and provided with sufficient powers to carry out their functions specifically under Section 67C of the Act.

Forestry Officers are responsible for inspecting and approving the export of indigenous timber. That responsibility cannot be met by anyone who is not an appointed Forestry Officer.

Forestry Officers will be provided with a warrant of authority identifying them and providing evidence of appointment. There is a requirement for the warrant of authority to be presented during inspections.

The roles of MPI and AsureQuality Forestry Officers (AQFO) differ, as follows:

- MPI Forestry Officers are responsible for assessing a MFM3 and confirming or otherwise, the source of the timber under Part 3A of the Act.
- AsureQuality Forestry Officers are responsible for receipt of a MFM3, inspection of the indigenous timber intended for export and approval to export.

2.4 POWERS OF A FORESTRY OFFICER

The legal authority to carry out the functions in relation to Section 67C of the Act is derived from the powers conferred on a Forestry Officer by Section 67R of the Act and qualified by Section 71B as follows:

67R - Powers of entry and seizure

For the purposes of this Part of this Act, the Secretary and any Forestry Officer shall have power—

- (a) To enter any land, premises, vehicle, conveyance, ship, aircraft, railway, railcar, or bulk cargo container for the purpose of inspecting any indigenous timber from any indigenous forest land or seeing whether any such timber exists there; and*
- (b) To search therein for any indigenous timber; and*
- (c) To enter any indigenous forest land; and*
- (d) To require the production and surrender of any document relating to indigenous timber; and*
- (e) To seize any indigenous timber that he or she reasonably believes is about to be, is being, or has been milled or exported, or has been felled or harvested, in contravention of this Part of this Act.*

71B - Restrictions on exercise of power of entry

- (1) Notwithstanding any other provision of this Act but subject to subsection (2) of this section, any provision in this Act or any regulations made under this Act giving any person the power to enter any land or premises ..., vehicle, conveyance, ship, vessel, aircraft, bulk cargo container, railway, or drilling rig without the consent of the owner or occupier shall be subject to the following conditions:*
 - (a) Entry shall only be made by the person or class of persons specified in the relevant provision or any member of the Police authorised by the person or a member of that class of persons:*
 - (b) Reasonable notice of the intention to enter shall be given unless the giving of the notice would defeat the purpose of the entry:*
 - (c) Entry shall be made at times reasonable in the circumstances:*

- (d) *The person entering shall carry a warrant of authority or be working under the direction of a person holding such authority which shall be produced on initial entry and, if requested, at any subsequent time:*
 - (e) *Entry—*
 - (i) *Into any dwellinghouse; and*
 - (ii) *On to any land or into premises, vehicle, conveyance, ship, vessel, aircraft, railway, or drilling rig to obtain evidence of an offence—*
shall be made following application in writing on oath by an authorised person to a District Court Judge, Justice of the Peace, Community Magistrate, or Registrar or Deputy Registrar of any Court, who, if he has reason to believe that entry is necessary, may issue a warrant directed to the authorised person by name directing him to enter for the stated purpose:
 - (f) *Every person shall have the same privileges in relation to—*
 - (i) *The production to an authorised person of any books, accounts, vouchers, records, or documents; and*
 - (ii) *The furnishing to any authorised person of any information or particulars; and*
 - (iii) *The answering of any questions put by any authorised person under this Act—*
as witnesses have in Courts of law.
- (2) *The conditions specified in subsection (1) of this section, other than that specified in paragraph (a) of that subsection, shall not apply in circumstances where there are reasonable grounds to believe—*
- (a) *That there is an immediate danger to life or property; or*
 - (b) *That immediate entry is necessary to contain, eradicate, or prevent—*
 - (i) *Repealed.*
 - (ii) *Fire,—*
in order to avert serious damage to or destruction of any forest or forest produce:
 - (c) *Repealed*

Section 67R(a) provides a Forestry Officer with the power to enter any land, premises and other specified places including shipping containers to inspect indigenous timber as required by Section 67C(3)(a)(iii).

Section 67R(d) further provides the power to require the production and surrender of any documents relating to indigenous timber and Section 67R(e) provides the power to seize indigenous timber the Forestry Officer reasonably believes is not authorised under the Act.

It is not intended for AQFO's to invoke powers under Section 67R(d) and (e). They should notify the relevant Regional Manager within the Forestry and Land Operations Directorate of any possible breaches of the Act (see point 4; *Schedule* of the MPI/AsureQuality Services Agreement in Appendix 5).

Only a warranted Forestry Officer can exercise the power of entry to inspect.

The powers provided for under Section 67R are restricted by the provisions of Section 71B. Entry (and as such inspection) can only be made by a Forestry Officer (the Act does provide for entry power to Police acting under Forestry Officer's authority but this would not generally be relevant to inspections for export).

Notice of intention to inspect (the export consignment), at a reasonable time, shall be given to the exporter/property owner/occupier unless such notice would defeat the purpose of the inspection.

Entry shall be made at times reasonable in the circumstances. An inspection during normal business hours would satisfy this requirement.

All Forestry Officers shall carry their warrant of authority which is to be shown to any person present and/or having control of that indigenous timber for export and to any such person if subsequently requested.

Entry for the purposes of gathering evidence in relation to offences against the Act requires a search warrant and should not be undertaken by an AQFO. In situations where a breach of the Act is suspected, the AQFO must notify the relevant MPI Regional Manager.

3. EXPORT PROCEDURES

3.1 MFM3 Approvals

The following procedures are to be used by MPI and AsureQuality Forestry Officers in the course of inspecting/approving indigenous timber product exports that require MFM3 approval. The procedures are summarised in the flowchart at the end of this section.

3.1.1 The AQFO must ensure that the Exporter has provided a fully completed MFM3 form that has sufficient details to enable the stated export product(s) to be reconciled with the actual.

3.1.2 The critical details to be included on every MFM3 include:

- A description confirming the source of the timber (can be attached as a separate document)
- A description of the product(s) e.g. or furniture blank or rusticated table top from a swamp kauri stump.
- Quantity of product (volume; number of pieces)
- Dimensions
- Any particular markings

The form must be returned to the Exporter if it is not completed as required.

3.1.3 The Exporter must present the MFM3 at least 10 days before the intended date of export

3.1.4 Once satisfied that the MFM3 is fully complete, the AQFO forwards the form to MPI Forest and Land Operations staff at either the Christchurch or Rotorua Regional Offices :

- Christchurch – Phone: 03 943 3700; Fax 03: 943 3701
- Rotorua – Phone: 07 921 3400; Fax: 07 921 3402

3.1.5 Scanned or faxed copies are acceptable provided they are of good quality and in particular; the Exporter's signature is clearly evident.

3.1.6 MPI staff assess the MFM3 to check that the product is from a legitimate source in accordance with the Forests Act

3.1.7 As part of the approval process, the AQFO must inspect all proposed exports requiring MFM3 to verify compliance with the Forests Act.

3.1.8 Inspections should be carried out prior to the product(s) being loaded into a container otherwise the contents of the container must be readily accessible to enable a thorough inspection.

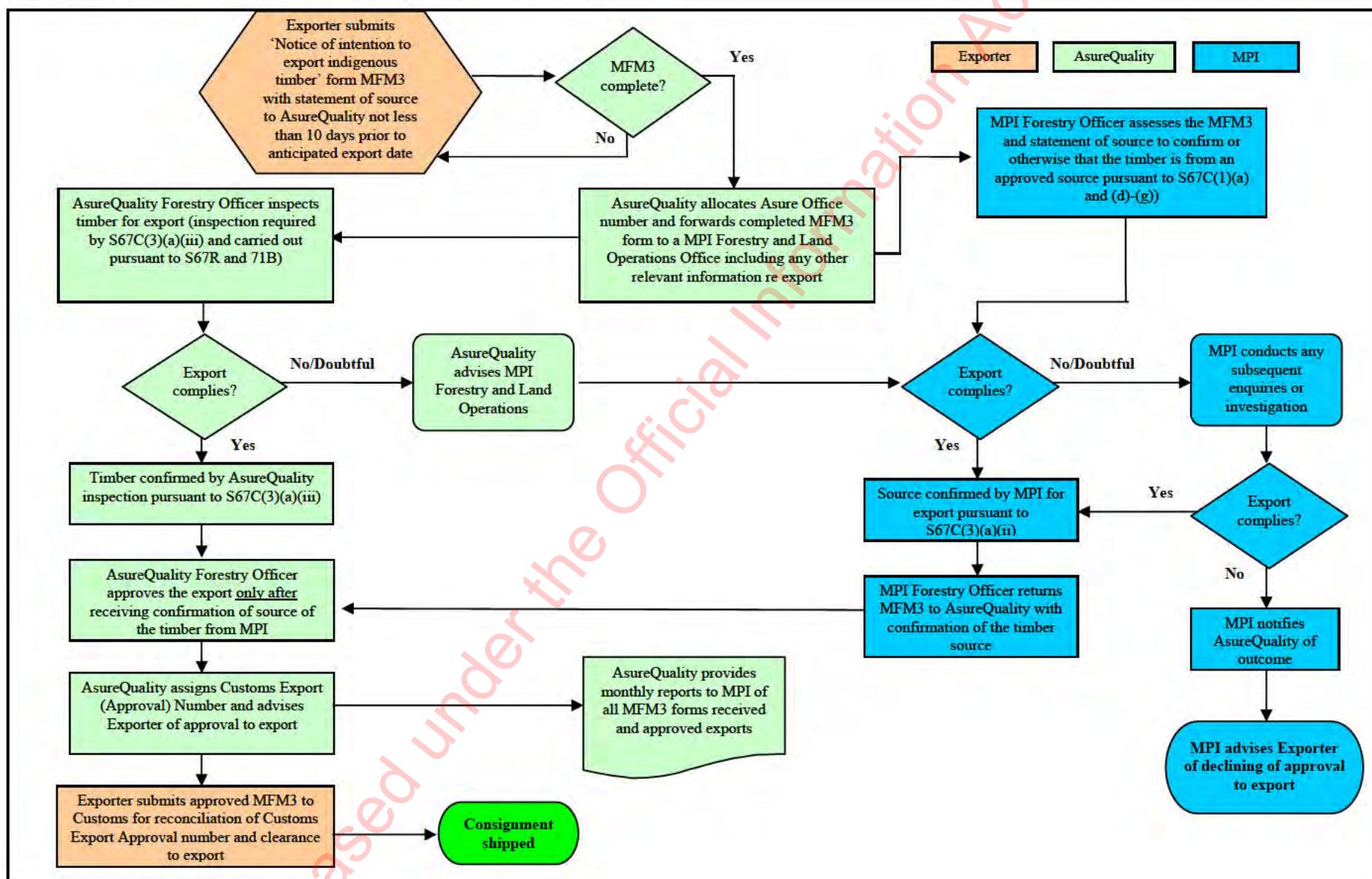
3.1.9 In situations where there is a high risk of product substitution, the AQFO should observe the loading and sealing of the container .

- 3.1.10 The AQFO determines whether or not the proposed export is compliant. In situations of non-compliance or doubt, the AQFO must notify the MPI Regional Manager or his/her delegate. The AQFO should include photographs of the product(s) in question as part of that notification process.
- 3.1.11 MPI will deal with the matter from thereon, which may include a joint inspection with the AQFO. In cases of doubt, MPI will determine whether or not the product(s) is compliant and then advise the AQFO, accordingly.
- 3.1.12 MPI is responsible for advising the Exporter in situations of non-compliance.
- 3.1.13 Having confirmed that the product is from a legitimate source, MPI returns the verified MFM3 to the AQFO for approval.
- 3.1.14 THE AQFO approves the MFM3 only after having inspected the product and receiving confirmation from MPI as to the legitimacy of its source. The AQFO assigns a customs export (approval) number and advises the Exporter of the approval.
- 3.1.15 The Exporter submits the approved MFM3 to Customs for reconciliation of the Customs Export approval number and clearance to export.
- 3.1.16 Each month, AsureQuality provides the MPI Forestry and Land Operations' Regional Managers with a summary of all MFM3 forms received for that month showing dates of approval.

3.2 Finished/Manufactured Products (non-MFM3).

- 3.2.1 Exports of finished or manufactured indigenous timber products do not require MFM3 approval. However, they are commonly subject to phytosanitary inspections by AsureQuality.
- 3.2.2 During phytosanitary inspections the AQFO should verify that the proposed export is a finished or manufactured product in accordance with the Forests Act. Refer to the *Guidance Note On Interpretation Of Finished Or Manufactured Indigenous Timber Products Proposed For Export* in Appendix 2 of this manual to assist with this process.
- 3.2.3 In the event that an inspection reveals an export is not a finished or manufactured product or there is uncertainty, then the AQFO notifies MPI who will then investigate the matter. Again, the AQFO should provide photographs of the product(s) in question and MPI may undertake a joint inspection with the AQFO.
- 3.2.4 MPI will advise the AQFO and the Exporter of the outcome of any such investigation.

3.3 Indigenous Timber Exports (MFM3) – Process Chart



APPENDIX 1

Illustration of A Stump



APPENDIX 2 Guidance Note on Interpretation of Finished or Manufactured Indigenous Timber Products proposed for Export¹

1. Section 67C of the Forests Act 1949 prohibits the export of certain indigenous forest products and specifies which timbers may be exported.
2. Section 67(1) (b) allows the export of.. *any finished or manufactured timber product, regardless of the source of the timber used in the product.*
3. A “finished or manufactured” timber product as defined in the Act:
 - (a) *Means any indigenous wood product that has been manufactured into its final shape and form and is ready to be installed or used for its intended purpose without the need for any further machining or other modification; and*
 - (b) *Includes a complete item or a component of an item (whether assembled or in kitset form) such as joinery, furniture, toys, tools, and household utensils, household fixtures such as rails and toilet seats, ornaments such as picture frames and carvings and similar items; but*
 - (c) *Does not include dressed or rough sawn timber, mouldings, panelling, furniture blanks, joinery blanks, building blanks, or similar items:]*
4. Forestry officers (FO) inspecting proposed exports will decide whether a timber product is *finished or manufactured* strictly in accordance with the above definition on a case by case basis.
5. Under paragraph (a) of the definition:
 - The product must be an indigenous timber product;
 - It must be in its final shape and form;
 - It needs to be ready to be used for its intended purpose without any further modification.
6. If a FO does not believe the product can be used for its intended purpose without further machining or modification it is NOT *finished or manufactured*.
7. Conversely if a FO is satisfied that the product can be used for its intended purpose without further machining or modification it CAN be accepted as *finished or manufactured*.
8. Painting, staining or varnishing is excluded from further modification. That is, a product can be accepted as a finished product if it is unpainted, but in all other respects is in its final shape and form.
- 9 Paragraph (b) of the definition provides guidance on the kinds of products which may be considered *finished or manufactured*. These are all clearly completed items or components of completed items which require no further finishing or manufacture. There will be many more examples than those listed.

¹ Reference: Swamp Kauri – Export of Finished or Manufactured Goods; George Capes, MPI Legal 19 December 2011.

10. Paragraph (c) attempts to further clarify by stating what is not in the definition. Dressed or rough sawn timber that is not in its final shape and form is not *finished or manufactured*. Similarly, mouldings and panelling do not qualify and neither do the various blanks cited. The reason for all these products being outside the definition is because further work needs to be undertaken on each of them to make a “final shape and form” product.
11. If no further manufacture, modification or finishing is needed to these products then they are “finished products”. Thus planks of dressed or rough sawn timber do not meet the definition but a kit set pergola made of timber components (dressed or rough sawn), cut to length, in final shape and form so that it can be assembled as part of a plan without further modification meets the definition of a finished product.

Examples of Finished Products which have been accepted by MPI

(in the case of examples 13 to 16, after comprehensive checks):

12. All items listed under Paragraph 3(b) above
13. A wooden tongue and groove floor which has been cut to length according to a floor plan provided and which can be assembled from its component parts without further modification.
14. A Kauri tree trunk manufactured into an ornamental “temple pole” for decorative/religious purposes.
15. Kitchen fit outs using finished indigenous timber components specified in a design plan.
16. A complete shop interior fit-out (boutique clothing store).

Note: In each of examples 13 – 16 MPI requested and received detailed plans and specifications concerning the product and how and where it was to be used / displayed. Generally these were treated as one-off exports and not to be regarded as precedents for future exports in bulk.

If Assurance officers encounter such examples / requests for endorsement, they should be referred to MPI.

Examples of Products Which Do Not Meet the Definition of Finished or Manufactured:

17. All items listed in paragraph 3(c) above which by definition are not in final shape and form.
18. Items such as “ancient kauri” timber planks which are represented as “rusticated table tops” but which the Forestry Officer inspecting reasonably believes are merely planks being exported for further sawing/manufacture.

What do I do if an Exporter asks for advice on whether a product meets the definition of “*finished or manufactured*”?

19. Explain the legal definition of a finished or manufactured product and whether the product meets the other export requirements as to species and source (refer to the definition in paragraph 4 above and to section 67C of the Forests Act).
20. Ask the exporter to provide documentation to support any claim that the end use of the product is such that it requires no further finishing or modification. This may include design plans and / or information on who the end user is (are they a supplier or user of finished items?) and orders received for the finished items. Note this information must be supplied on a voluntary basis. There is no obligation for an exporter to supply any documentation or approval for finished or manufactured items.
21. You may point out that it is an offence to export any indigenous timber in contravention of Section 67C punishable by a fine of up to \$200,000 on conviction (sections 67T(a) and 67U(1)).
22. If you are unsure – contact a MPI Regional Manager Forest and Land Operations or contact the Technical Advisor Forestry Operations.

APPENDIX 3: EXAMPLES OF FINISHED/MANUFACTURED INDIGENOUS TIMBER PRODUCTS APPROVED FOR EXPORT



Table Tops Made From Logs



Table & Stools Made From Stumps



APPENDIX 4: EXAMPLES OF INDIGENOUS TIMBER PRODUCTS NOT APPROVED FOR EXPORT

Kauri “rusticated table tops”, which are indistinguishable from sawn timber, should be refused for export unless from a stump or root. Note that sawn beech or rimu timber is permitted for export when harvested pursuant to an approved SFM Plan or Permit and an approved Annual Logging Plan.



Prohibited Items: Indigenous Logs



Prohibited Items: Kauri wood turning blanks (if sourced from logs)



APPENDIX 5: Clause 3 and Schedule 1 of the MPI/AsureQuality Service Agreement

Clause 3. Services of the Service Agreement between MPI and AsureQuality (dated 10 August 2010) states the following:

- 3.1 **The Services:** AsureQuality agrees to provide to MPI on the terms recorded in this agreement, the services as listed in Schedule 1.
- 3.2 **Alteration of Services:** The parties acknowledge that the nature of the Services to be provided by AsureQuality are subject to the provisions in the Forestry Legislation³. Accordingly, any amendment to the Forestry Legislation may require an alteration to the definition of the Services in this agreement. Any alteration to the definition of the Services will be agreed by the parties in writing and appended to this agreement
- 3.3 **Standard of Services:** AsureQuality shall ensure that the services provided to MPI are performed promptly with due diligence, care and skill and that the Services will satisfy the requirements of MPI, and meet all specifications stipulated by MPI in Schedule 1.

Schedule 1

Pursuant to clause 3, services to be provided are as follows:

1. **Documentation:** AsureQuality shall receive, store and keep in secure custody all Documentation received from persons intending to export indigenous timber products.
2. **Visual inspection:** AsureQuality shall undertake visual inspections of the indigenous timber product(s) to determine whether the products(s) comply with the export requirements specified in the Forestry Legislation.
3. **Verification:** AsureQuality shall verify that the product(s) described on any Form ¹MPIIE1 are a true representation of the product(s) being exported. All exporters shall be visited to confirm that the products match the description on the relevant Form MFM3 (or ¹MPIIE1 if appropriate). On receipt of confirmation of the existence of an approved source from ²Sustainable Programmes Directorate, AsureQuality may then approve the export, allocate an Export Approval Number (section 7 of this schedule) and advise the exporter that the export may proceed. AsureQuality shall then forward a copy of the completed Documentation to Directorate for their records.
4. **Notification:** Where AsureQuality determines that the products may not comply with the Forestry Legislation, AsureQuality will notify Sustainable Programmes within twenty four (24) hours by telephone and implement any reasonable instructions received from Sustainable Programmes Directorate. Where AsureQuality suspects the elements of an offence exist and have not yet entered premises, they will not enter the premises but instead will advise Sustainable Programmes immediately. Where AsureQuality become aware of the elements of an offence after entering premises, they will promptly leave the premises and advise Sustainable Programmes immediately. Upon request in writing by Sustainable Programmes, AsureQuality will furnish Sustainable Programmes with a report regarding the non-complying products.

¹MPIIE1 = MFM3

²Sustainable Programmes – now Forestry and Land Operations

³Forestry legislation means Forests Act 1949

5. **Monthly Report:** AsureQuality shall prepare a monthly report regarding the products inspected and approved during that month by region. The monthly report shall be supplied to Sustainable Programmes electronically, within seven working days of the end of each month.

The report shall be in spreadsheet form, with information entered electronically and divided into worksheets by region. Where there have been no exports in a region this shall also be shown.

The report must include:

- a. the unique number assigned to each Form MFM3 (or MPIIE1 if appropriate) as it relates to the export consignment;
- b. the name of the port of export;
- c. the name of the exporter;
- d. the destination of the export;
- e. the species of the products;
- f. the type of products (e.g. sawn, salvaged stump);
- g. the volume or weight or number of the products. A tick box is to be included in this column to verify that weight/volume has been verified by AsureQuality;
- h. method of verifying weight/volume;
- i. the name of the Officer completing the inspection;
- j. the date that Sustainable Programmes confirmed (or otherwise) that the source of the timber as stated in the Form MPIIE1 was an approved source;
- k. the date the export was approved by an AsureQuality New Zealand Forestry Officer and the name of the Forestry Officer.

6. **Unique Numbering:** The Officer on receipt of the Form MPIIE1 from the exporter shall uniquely number all Form MPIIE1's and enter the AsureQuality office location code. The unique number shall be used to track the document through all stages of processing the application and recorded in reports provided by AsureQuality New Zealand to Sustainable Programmes.

Each region shall be known in the following abbreviations:

AK	Auckland
TA	Tauranga (included Mount Maunganui)
HT	Hastings
NP	New Plymouth
WO	Wellington
NE	Nelson
CH	Christchurch (includes Timaru)
DN	Dunedin (includes Bluff)

7. **Customs Export Approval Number:** MPI shall provide to AsureQuality a list of Customs Export Approval Numbers obtained from NZ Customs Service.

APPENDIX 6:



MILLING AND EXPORTING SWAMP KAURI

SOURCING SWAMP KAURI

You can remove the trunk and roots of preserved swamp kauri from some sources, such as farmland, provided you have all the necessary approvals, and permission from the landowner.

It is against the law to mill or export swamp kauri from indigenous forest land, even if it is privately-owned. Some areas where swamp kauri is found are protected wetlands, and you may need a resource consent to remove the swamp kauri.

Please check with us and your district or regional council to find out if you can remove the swamp kauri, and what approvals and consents you will need.

MILLING

Swamp kauri can be milled only if the timber:

- has a MAF Milling Statement;
- is milled at a sawmill registered with MAF to mill native timber.

EXPORTING

Swamp kauri can be exported without MAF approval if it is a:

- finished or manufactured product;
- personal effect.

You can export whole or sawn salvaged swamp kauri stumps or roots if you have a MAF Milling Statement and export approval from MAF.

Swamp kauri logs may not be exported, either whole or sawn.

The Forests Act 1949 sets out controls on the milling and exporting of New Zealand native timber, including salvaged swamp kauri.

This protects New Zealand's forests for our future generations.

You can remove, mill, and export swamp kauri from some sources if you have a Milling Statement and export approval.

HOW TO APPLY FOR A MILLING STATEMENT

You must have a MAF Milling Statement before any milling starts.

A Milling Statement confirms that the timber is from an approved source.

Milling Statement application forms are available from our Rotorua and Whangarei offices, or can be downloaded from our website: www.maf.govt.nz/news-resources/forms

HOW TO APPLY FOR EXPORT APPROVAL

You must have export approval before exporting whole or sawn swamp kauri stumps or roots.

To get this, you will need to fill out a Notice of Intention to Export application form (also known as an MFM3 form), which is available from our Rotorua and Whangarei offices.

You must also send written confirmation of the source of the swamp kauri. This could be an approved Milling Statement or a signed declaration on the MFM3 form or on another piece of paper, such as:

"This timber has been sourced from salvaged kauri stumps and roots from non-indigenous forest land, as stated on Milling Statement number..."

Send your completed MFM3 form and written confirmation of the swamp kauri's source toASUREQuality at least 10 days before it is due to be exported. ASUREQuality will carry out an inspection on our behalf.

ASUREQuality – Auckland Airport office
verify@asurequality.com
Fax: 09-257-0601

ASUREQuality – Mt Maunganui office
phytocerts@asurequality.com
Fax: 07-575-8110

FOR ALL ENQUIRIES CONTACT A MAF PROGRAMMES ADVISER AT:

Te Papa Tipu Innovation Park
99 Sala Street, PO Box 1340
Rotorua 3040
Telephone: 07-921-3400
Facsimile: 07-921-3402
Web: www.maf.govt.nz

35 Norfolk Street
PO Box 503
Whangarei 0140
Telephone 09-430-7850
Facsimile: 09-430-7849

FREQUENTLY ASKED QUESTIONS

What swamp kauri products can be exported without MAF approval?

You can export finished or manufactured products and personal effects without MAF approval.

Finished or manufactured products are defined in the Forests Act, as any manufactured wood product in its final state that is ready to be installed or used for its intended purpose. This includes products such as joinery, furniture, toys, tools, household utensils, household fixtures such as rails and toilet seats, and ornaments such as picture frames and carvings.

Dressed or rough sawn timber, mouldings, panelling, furniture blanks, joinery blanks,

building blanks, and similar kauri items are not finished or manufactured products.

What is indigenous forest land, where harvesting swamp kauri is banned?

The Forests Act defines indigenous forest land as land that is completely or mostly covered by indigenous plants, and wetlands with mostly indigenous vegetation.

It is against the law to harvest any swamp kauri from indigenous forest land. This protects New Zealand's indigenous forests for future generations.

Can a stump of any size be exported?

The Forests Act sets out a specific definition for stumps. You can export a whole or sawn salvaged swamp kauri stump if it meets the

definition and you have a MAF Milling Statement and export approval from MAF.

A stump can include the roots and the trunk above the groundline as far as the point that is the same length as the maximum diameter of the trunk. A stump can be from either a living or dead tree.

Any remnant of a tree is regarded as part of a complete tree. (See image below).

What is the groundline?

The Forests Act defines the groundline as the base of either a living or dead tree where it naturally made contact with the ground.

