

Submission

National Direction for Plantation and Exotic Carbon Afforestation

Submission to:

National Direction for Exotic Afforestation

Forestry and Bioeconomy Policy Team

Ministry for Primary Industries

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Contents

Contact Details 3

Submitter 3

General Comments 3

Part A: Managing the environmental (biophysical) effects of exotic carbon forestry..... 6

Part B: Controlling the Location of plantation and exotic carbon afforestation to manage social, cultural and economic effects..... 15

Part C: Improving Wildfire Risk Management in All Forests..... 24

Part D: Enabling foresters and councils to better manage 31

Additional matters requiring clarification 43

Conclusion 45

Appendix: 46

 G Chappell legal opinion..... 46

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Submitter

The New Zealand Forest Owners Association Incorporated (FOA) is the representative membership body for the commercial plantation forest growing industry. FOA members are responsible for the management of approximately 1.2 million hectares of New Zealand's 1.74 m hectares of plantation forests and over 75% of the annual harvest.

Forestry export revenue was \$6.2 billion in the year ending June 2022 and this is expected to increase to \$6.47 billion in 2023. Harvest volumes reached 36 million cubic metres in the year ended March 2022. While 2022 saw a significant decrease in log export revenue due largely to the impacts of the Covid interventions in NZ and abroad, this is forecast to recover by 2024 and then see an increase (SOPI June 2022).

The forestry sector also supports employment (40,835 FTEs), investment, and development across New Zealand throughout its supply chain in both urban and rural New Zealand.

We welcome the opportunity to provide a submission on the on the National Direction for Plantation and Exotic Carbon Afforestation discussion paper. FOA wishes to be heard in support of our submission.

We consent to the submission being public.

General Comments

Overall, the consultation document is an inadequate attempt at seeking input to determine an appropriate policy response. The document starts from a premise that there are significant, uncontrolled, adverse impacts from exotic only forests that are a priority to be addressed and the consultation is then focused on how many impacts should be included, and which of two options is the best way to do it.

The document acknowledges that concerns raised are largely driven by a particular type of forestry investment that has significant differences from the planted production forestry that supports the wood industry and yet it proposes to adopt the same approach for both types of exotic forests. This is despite the National Environmental Standards for Plantation Forestry (NES-PF) regulating both exotic and native production forestry.

The definitions used are inaccurate and misleading. Little attempt is made to acknowledge the fundamental differences between 'carbon' (non-wood production) forest and plantation (wood production) forestry and yet this distinction is critical. The failure to accurately separate these distinct types of operations calls in to question the value of the consultation process and the ability to be able to decipher meaningful feedback from it, particularly given the loaded nature of many of the questions.

The FOA considers that the NES-PF for plantation forestry already provides a robust framework for managing the effects of plantation forestry and certainly more than other primary production land use. Conversely, FOA considers that such a framework does not exist for forestry grown for carbon only returns.

This does not mean, however, that the framework which was developed specifically for production forestry can therefore easily incorporate carbon-only forestry. Most of the activities regulated under the NES PF have no relevance for carbon only non-production forestry. Over half of the provisions are not applicable to non-production forestry. It appears that an argument is being made that production forestry needs additional controls in order to justify incorporating non-production forestry.

Local authorities already have the ability to place controls on permanent non-production forestry. If there is no faith in the ability or willingness of local authorities to do so then a separate standard could, and should, be developed for carbon-only non-production or permanent exotic and native forestry.

Beyond the control of the Resource Management Act (RMA) and the NES-PF and whatever is developed for carbon-only forestry there is no justification for local authorities to dictate what a landowner may, or may not, plant on their land. In this position we have the support of other primary sector groups representing farming interests. It is inequitable to prescribe land use controls for some primary sector groups but not others.

The NES-PF, the RMA and its successor has already taken into account social, environmental and economic considerations. FOA rejects the argument that something is missing and therefore local authorities should have the final say, just in case.

There are legitimate considerations about impacts at the community level, but such impacts are complex and involve multiple variables. The rural environment in Aotearoa is necessarily dynamic to ensure its sustainability. There are underlying global demographic trends unrelated to forestry that are influencing the composition of rural communities. For New Zealand to adapt and achieve zero emissions, a degree of land use change is required. When this happens there will be altered patterns of employment, but this does not constitute evidence that the net impact is negative. Arguing for no change to the status quo is arguing for no adaptation to climate change. It is not appropriate to abdicate national policy responsibility to the local level.

As noted multiple times, planted production exotic and native forestry and non-production exotic carbon forestry are not synonymous. Asking about both in the same questions is effectively ensuring that the feedback from this consultation process will be uninterpretable and meaningless.

FOA considers that there is a need to develop rules and regulations to ensure carbon-only forestry provides net benefits, but the FOA has grave concerns that the approach clearly favoured by the authors of the consultation document will lead to a perverse outcome for all forestry in New Zealand that will undermine the very development objectives the document purports to support. FOA would be happy to work with officials to ensure a net positive outcome.

Terms used in the document

The description of 'carbon forest/forestry' is unclear. The definition in the discussion document describes carbon forestry as having a 'similar meaning to plantation forest as defined in the NES-PF except that that it will not be harvested below a certain level of canopy cover' and is 'sometimes referred to as permanent forest'. The two aspects of the definition are mutually exclusive; forests are either planted for commercial purposes and will be harvested and replanted (the NES-PF definition) or they are permanent forests. They cannot be both. To further add to the confusion, the exclusion in the NES-PF definition for 'long term ecological restoration planting of forest species' could apply to permanent carbon forests. Similarly, there is no explanation of why regulation of permanent forests is restricted to only exotic permanent forests, given many of the concerns raised with permanent forests apply equally to permanent native forest.

The issue becomes more confusing when commercial plantation forests (that meet the NES-PF definition of plantation forest) are entered into the New Zealand Emissions Trading Scheme (ETS) and could therefore be considered 'carbon forests'. This is already causing confusing with District Councils misinterpreting that plantation forests entered into the ETS are not covered by the NES-PF, which is clearly incorrect. It is critical that any new regulation includes very clear definitions and a clear distinction between plantation forests and non-production forests. For clarity the description and associated definitions need to be clear and unambiguous. A term such as 'non-production carbon forest' would be less ambiguous than carbon forest.

The definitions of plantation and carbon forestry are confusing and misleading.

In summary, the definitions need to be distinct (rather than "lumping" all forests into one) as:

- a. Over half of the existing provisions of the NES-PF are not applicable to non-production forests;
- b. If there are differences as to the effects of exotic versus native forests this needs to be clear; and
- c. Different types of forests will have different social, economic and cultural effects.

Section 1.5 Policy objectives for managing exotic forestry and afforestation under the resource management system

At a general level the policy objectives are somewhat contradictory and conflicting. On the one hand the Government is seeking to develop a sustainable and diverse forest estate as a key mechanism to transition to a low emissions economy. Plantation forestry is essential to achieving New Zealand’s emissions reduction goals, enabling greenhouse gas intensive products to be replaced by wood-based products sourced from sustainably managed forests. This includes not only low carbon emitting building materials and biofuels, but also a rapidly growing range of alternative biomaterials sourced from trees. In addition to this direct contribution to a low carbon circular bioeconomy, the Climate Change Commission (CCC) has clearly signaled the need for 380,000 hectares of new exotic forestry to be established by 2035 to enable New Zealand to meet our climate change objectives. This is precisely the reason that forestry is included in the ETS to incentivise afforestation to sequester carbon.

The government policy objectives for forestry are in conflict, essentially saying we want more forestry but we want local authorities to be able to prevent land use change to forestry.

By contrast the proposed changes to the NES-PF mostly seem to be aimed at constraining afforestation, extending beyond the current situation of delegating control to territorial authorities, to actually requiring them to have a consenting process for all afforestation. This will generate uncertainty, increase the time and cost burden and therefore substantially slow, if not stop afforestation in some parts of the country.

The existing settings of the NES-PF clearly show the impact of any resource consent requirement for afforestation. There have been limited resource consents lodged for afforestation in red zones or where the thresholds of the Wilding Tree Risk Calculator have not been met. This demonstrates that investors in new forestry are reacting rationally to the regulatory drivers and avoiding land where consents are required, given the uncertainty this creates.

While there has been much talk of ‘the right tree in the right place’, the reality is that what constitutes ‘right’ is extremely subjective and clearly depends on your background and demographics. The potential outcome of a discretionary consenting process will be to protect existing land use patterns and effectively lock in the status quo. Unfortunately, this is effectively doing things the same and expecting a different result, which clearly won’t deliver on our climate change objectives, let alone water quality and biodiversity.

Part A: Managing the environmental (biophysical) effects of exotic carbon forestry

Problem Statement

QA1: Do you agree with the problem statement set out above? Y/N. Are there other things we should consider?

No. FOA is concerned that the proposals are seeking to change the definition of “environment” as set out in the RMA. Environment includes both biophysical and social, economic and cultural conditions.

Nowhere in any of the consultation documents, reports prepared for the NES-PF is there any suggestion that only biophysical effects were taken into account.

The statement that ‘there is a lack of national direction to manage the environmental (biophysical) effects of exotic carbon forests’ is incorrect for forests that are plantation forests. For plantation forestry, there clearly is national direction under the NES-PF, which was specifically developed to manage environmental effects of plantation forestry activities. What is lacking is any national level controls over permanent afforestation, exotic or indigenous. This is simply due to the fact that the NES-PF was developed specifically for plantation forestry i.e. the intent to harvest. At the time of development there were no Council controls in operation for permanent forestry and no contemplation that there was a need for such controls.

The compelling “reasons” for developing an additional management regime for carbon only forestry do not hold for plantation forestry.

Permanent forestry was out of scope of the NES-PF development and **remains fully within the control of councils to draft rules as they see fit.**

The statement ‘exotic carbon forests have the same, or similar, effects to those of plantation forests but are not subject to the same standards’ is also incorrect. Exotic carbon forests that are intended for production forestry are clearly covered by the NES-PF. If they are permanent forests they are out of scope, but that said, the majority of the NES-PF regulations relate to the effects of activities associated with harvesting a production forest. Clearly permanent forests do not involve any of those activities and therefore the regulations are not relevant. The only activities covered under the NES-PF relevant to non-production carbon only forests are afforestation and potentially some limited road construction and associated crossings to create access for management reasons.

The ‘regulatory gap’ identified for exotic forests being transitioned to native seems, to FOA’s thinking, to be somewhat overzealous. There is no evidence that managing exotic vegetation to native forest cover has ever created a significant environmental issue in New Zealand sufficient to warrant regulation. To the contrary, to date that would be considered a biodiversity enhancement project to be encouraged and enabled not regulated. Furthermore, the proposals do not raise any issues warranting regulation for the planting of permanent native forests.

Similarly, the ‘problem’ of environmental issues associated with growing exotic forests out to the end of their natural lifespan seems somewhat overinflated. There are many examples of older unharvested stands of exotic trees planted all over New Zealand, including on farms, within production forests, arboretums, and some notable recreational parks such as Whakarewarewa Forest. The environmental benefits of these stands generally outweigh any perceived risks to the environment and in many cases the stands have become highly valued by local communities. The notion that forests will reach the end of their life and fail catastrophically almost in unison is just simply not a biological reality. The key issue of significance to be managed at the time of afforestation is the planting of fast-growing heavy tree species on severely erodible geology, such as mudstone and skeletal soils. Eventually the weight of the trees will outweigh their root stability and toppling can occur. In this situation, FOA accepts that an educated assessment and therefore regulation is warranted. For this reason, afforestation in this geology is already regulated under the NES-PF afforestation regulations.

Other problems relating to permanent forests during the growing phase, such as pests, disease or fire risk apply to all forms of vegetation including native forests and can be managed through other legislative processes outside of the RMA.

The problem statement seems overly simplistic, and to be almost amplifying relatively minor environmental issues to justify regulation which, in reality, is being driven by social issues - the opposition by rural communities to afforestation of farmland often fed by misinformation. New Zealand clearly needs additional forests, most urgently to meet our climate change objectives but also to meet water quality aspirations. For both of these reasons, the ability to convert forested land to farmland has effectively now been prevented by the ETS and a number of Regional and District Plans (for example, Waikato, Lake Taupo, Lake Rotorua) and more recently the National Environmental Standards for Freshwater (NES-F).

The ETS was established to encourage afforestation and is finally being successful in achieving that. But afforestation will inevitably result in land use change and if undertaken at scale, a change to the makeup of rural communities. This is resulting in opposition to change from those rural communities where afforestation is occurring. Unfortunately, there is no win-win solution to this problem. New Zealand cannot have afforestation without land use change and the new forests have to be planted on farmland somewhere in New Zealand. This is a complex problem and FOA questions whether devolving this to 67 territorial authorities to manage via resource consents is the most efficient or effective way of resolving it.

It is not appropriate to abdicate national policy responsibility to the local level.

The second part of the problem is the concern that, at current carbon prices, the ETS is providing too strong a price incentive such that we may end up with more forest than we need to meet our climate change targets. Many would argue that this is a significantly lesser problem than the alternative. To resolve this is going to require some mature discussions and compromise. Again, FOA questions whether a fragmented consenting processes administered by a multitude of territorial authorities working in isolation will actually deliver the holy grail of the exact right area of forest being established in the 'right' location.

QA2: Have we accurately described the environmental effects of exotic carbon forests (Table 2)? Y/N. What other environmental effects (if any) need to be managed that are different to those of plantation forests? Please provide evidence of the impact of these effects.

No. As a general comment Table 2 focusses only on the negative impacts of plantation forests. Obviously for many of the environmental effects described (water quality, erosion, water yield, biodiversity) afforestation of farmland will in fact result in beneficial effects as compared to under farmland. This must be considered when developing regulation to avoid perverse outcomes. For example, preventing afforestation due to erosion concerns, will potentially result in the worse outcome of land use being constrained to even higher erosion risk use in pasture.

QA3: Do you agree that the environmental effects of exotic carbon forests should be managed through the NES-PF? Y/N

No. Assuming 'exotic carbon forests' is referring to permanent forests only, this is a completely different activity to a plantation forest, with different social, economic and biophysical effects. In reality the problem that is being addressed by regulation of permanent forests is a completely different set of issues than the NES-PF was designed for. The changes proposed to incorporate permanent forests into the NES-PF go well beyond

The NES-PF is tailored to managing the effects of plantation forestry. Carbon only forestry is sufficiently different to warrant a dedicated approach.

amendments and are rather a change in scope. There is already much confusion amongst regulators as to which regulations apply to which types of forestry, and placing permanent forests under and NES for ‘plantation forestry’ and including vague descriptions such as ‘exotic carbon forests’ will only serve to increase that confusion. It is FOA’s strong preference that any regulation of permanent forests be created under an entirely separate National Environmental Standard (NES), containing rules designed specifically for forests that will not be harvested. Such an instrument should cover both exotic and native permanent forests given many of the effects are the same.

If in time a choice is made by the landowner to switch from permanent forest to undertake harvesting as a plantation forest, then the regulations that would apply would simply change to being the NES-PF. This is no different to any other situation of changing land use, where different rules will apply depending on the activity being undertaken which has not proved to be a burden for other landowners. If there is concern about permanent forests switching to plantation forests, this could be addressed through applying the same planting setbacks to both.

QA4: The right hand column of Table 2 sets out possible new regulatory controls. Please indicate if you disagree with any of these potential controls or feel we have missed anything and explain or provide evidence.

Environmental effect	Comment
<i>Locational effects (afforestation)</i>	
Outstanding Natural Landscapes and Features (ONFLs)	The primary reason for controlling afforestation for plantation forestry in ONFLs relates to the impacts of roading and in particular harvesting. Territorial Authorities have in many parts of the country commonly mapped existing production forests as ONFLs, indicating that the trees themselves do not detract from the landscape values. It is therefore questioned whether permanent exotic afforestation warrants control, noting that the vegetation it will be replacing (grass) is also exotic.
Visual amenity landscapes	The NES-PF regulation 13 effectively defers regulation to the District Plan rules, so extending this to permanent forests will not actually make any change.
Vegetation clearance pre-afforestation	During the development of the NES-PF it was agreed that any vegetation clearance prior to planting was effectively an activity being carried out on farmland, prior to the plantation forest being established. For this reason it was agreed that any pre-establishment vegetation clearance should remain out of scope of the NES-PF and under the District/Regional Plan rules. The potential control identified that NES-PF rules for pre-afforestation vegetation clearance should apply is therefore incorrect – there are none.

	<p>Plan rules dealing with cultivation, vegetation clearance and earthworks in rural areas have the same effects prior to any afforestation and are best dealt with by the relevant plan rules.</p>
Water bodies	<p>The water body setbacks in the NES-PF were primarily established to control the effects of forests at harvest time. For non-production permanent forests, obviously this is irrelevant.</p> <p>What also does need to be taken into account is the impacts of this on riparian retirement on farms. Retiring and planting of riparian areas is actively encouraged, and in some instances, revegetation is in exotic species. It seems contradictory that planting exotic tree species in the riparian zone on farmland is considered beneficial, but in carbon forests requires regulation.</p> <p>That said, if there is concern about forests transitioning from permanent to plantation in future, applying setbacks would ensure that there is better protection if in 50 years time a permanent forest is harvested.</p>
Risk of mass movement erosion	<p>In principle FOA is not opposed to regulation of permanent exotic afforestation in the red zone. It is acknowledged that in land with severe erosion risk there is a need for careful consideration of the species to plant and the longer-term impacts. This regulation will need to be applied with discretion to avoid the perverse outcome of discouraging afforestation of red zone land - resulting in such land remaining in a significantly higher erosion risk under pastoral agriculture.</p> <p>It also needs to be acknowledged that, in red zone land, there is no zero erosion risk land cover. Even full native forest cover occasionally fails in severe weather events.</p>
Cumulative impacts on surrounding community	<p>Currently it is completely unclear as to the scope that is being considered for additional controls, how they would be regulated, and whether it is intended that these be applied to just permanent carbon forests or all exotic afforestation. In principle, FOA is opposed to regulation of land use change based on such subjective and loosely described effects. It is clearly understood that afforestation of farmland will provide a range of environmental benefits over the status quo and for plantation forestry will also generally increase economic returns and long-term employment opportunities. This needs to be objectively balanced against the goal of attempting to avoid any change in rural communities.</p> <p>New Zealand is only just coming out of a period of net deforestation, with the latest National Exotic Forest</p>

	<p>Description showing 1.74 million hectares of production forest as compared to the peak of 1.827 million hectares in 2003. The cumulative impact of the loss of these forests on both water quality and carbon sequestration was of sufficient concern to warrant regulation under the RMA and ETS which effectively prevents ongoing conversion of forests to farms. To then regulate the reverse land use change seems somewhat hasty and contradictory.</p>
<p><i>Management effects over the life cycle of the forest</i></p>	
Risk of wilding spread	<p>The only wilding rules in the NES-PF outside of the afforestation regulations are those that relate to replanting, which is not relevant to permanent forests.</p>
Risk of mass movement erosion	<p>The rules relating to afforestation are not relevant to permanent forests, so no change is required.</p>
Water bodies	<p>All of the water body setback rules in the NES-PF outside of afforestation, relate to activities associated with harvesting, and are therefore not relevant to permanent forests.</p>
Water yield	<p>The potential control that the NES-PF should apply to all forests, effectively means that the status quo applies. Water yield is currently out of scope of the NES-PF and managed by Regional Councils (where they have water yield rules). This is appropriate given that water yield is very much a location specific issue. Whilst much is made of water yield impacts of afforestation, as the discussion document notes, afforestation in any species (native or exotic) will result in less overall runoff and lower storm peaks. In many parts of the country this is returning waterways to a more natural runoff profile they would have had under the original native forest cover and provide benefits such as reduced stream bank erosion and downstream flooding – an issue that is becoming more prevalent through climate change.</p>
Water quality and sedimentation, indigenous bird nesting, fish species	<p>As for above, extending the provisions to all forests effectively means the status quo applies. Permanent forests won't generally have any activities that negatively affect any of these issues, and to the contrary will benefit them as compared to the original farmland.</p>
Wildfire	<p>Wildfire management falls under Fire and Emergency New Zealand (FENZ). FENZ already negotiate service level agreements under their legislation with plantation forest owners and managers.</p>

	<p>However, there is confusion with the statement that service level agreements is the main planning requirement for wildfire. This statement conflicts with statements in Part C. Furthermore, the service level agreements are predominantly how a forest owner will respond to fire and the cost sharing or otherwise of such response. Requiring a forest owner to provide personnel or equipment to help FENZ fight a fire would appear out of scope of the RMA.</p> <p>There is nothing in FENZ legislation to stop FENZ from negotiating service agreements with permanent forest owners. Incorporating RMA requirements and controls administered by territorial authorities has the potential to increase bureaucracy with doubtful benefits to FENZ.</p>
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Options to regulate exotic and carbon forests

QA5: Do you agree with option 2 for managing the environmental effects of exotic carbon forestry (amend the NES-PF to include exotic carbon forests)? Y/N Why?

No. As noted in question A3 above, it is FOA’s preference that non-production carbon forests and plantation forests are regulated separately, given the completely different activities being undertaken and therefore difference in effects. FOA cannot see how one set of regulations can effectively, concurrently regulate trees being planted for permanent afforestation and those that are intended for ongoing harvest and replanting. The reality is that the majority of activities regulated in the NES-PF will simply not occur in non-production forests and, therefore, the regulations are not applicable.

Most activities regulated under the NES-PF are irrelevant to non-production carbon-only forestry.

The key (and only) NES-PF activity that is relevant to both non-production and plantation forestry is afforestation. However, when making a decision on the appropriateness of afforestation in a particular location, clearly the future effects of that forest are entirely different for permanent forests than for plantation forests that are intended for harvest. In most instances, the environmental risks of a non-production forest will be considerably lower without harvesting activity but, clearly, the social and economic considerations of retiring land from production become relevant - which is not the case for plantation forests.

It is appropriate to manage the effects of exotic non-production forestry, but the NES-PF is not fit for this purpose.

For this reason, FOA is opposed to non-production forest rules being tacked onto an NES designed for plantation forestry. FOA is particularly opposed to simply amending the definition of plantation forestry to shoehorn non-production forests under the same definition, which will inevitably result in regulation that is not fit for purpose for either activity and result in perverse outcomes.

If the decision is made to include both under the one set of regulations, then at the very least, for clarity:

- The name of the instrument will need to be changed, to reflect that the scope has changed to cover non-productive (permanent) forests also.
- Afforestation regulations must be clearly separated into two activities (plantation and non-production) to reflect the completely different activities being undertaken and therefore effects and risks that need to be regulated.
- Permanent forests will need to be clearly defined to clarify that it does not include plantation forests entered into the ETS, which is currently not clear in the proposed description 'exotic carbon forest' (see OA's preceding comments on the definitions).
- A repeat Cost Benefit Analysis (CBA) will be necessary to reflect the change in scope.

Production forests and carbon-only non-production forests are sufficiently different that they require separate management regimes

QA6: Do you agree that a National Environmental Standard should manage (a) the environmental effects of exotic carbon forests only? Y/N or (b) environmental effects and forest outcomes, including transitioning from predominantly exotic to predominantly indigenous species? Y/N Why?

The FOA is supportive of an NES being developed for non-production carbon forests. FOA is opposed to the NES-PF being used as a quick mechanism to establish rules for non-production carbon forests.

The FOA does support appropriate controls on non-production carbon only forestry. Poorly managed forests do have the potential to impact on existing plantation forest owners. It is the FOA's view that the most appropriate place for managing this is under the ETS. The FOA position is that non-production carbon forestry should not be replacing viable production forestry or otherwise. Under ETS approvals there should be checks and balances to ensure that milestones that are proposed for a block are in fact being met, with penalties for not delivering against the transition model that has been submitted. Such regulation should not be under the RMA but rather ETS legislation.

QA7: Do you agree with the proposal in option 2 (amend the NES PF to include exotic carbon forests) to add wind effects as a matter for discretion to Regulation 17, to manage potential instability as a result of wind for all forests on red zone land? Y/N What benefits or drawbacks would there be from adding wind effects?

Afforestation on red zone land is already a restricted discretionary activity with the matters for discretion already broad enough to cover the concerns associated with windthrow (erosion, sedimentation, slope stability, slash retention, etc).

The issue with including wind specifically is the ability to predict where it will occur. This will almost certainly send council planners seeking expert advice where potentially none exists. The reality is that trees (native and exotic) can blow over in any part of New Zealand. In most instances the effects are isolated and won't result in any large-scale off-site effects. This occurs naturally in the native forest from time to time.

QA8: How effective would option 2 (amend the NES PF to include exotic carbon forests) be in managing the environmental effects of exotic carbon forestry? (select from a range/scale not effective – highly effective) Why?

As currently described, it is impossible to answer this question. The answer depends entirely on how the regulation is drafted, how clear it is and therefore how well understood and how it is implemented and enforced by District Councils. If not well designed the outcome could simply add bureaucracy and

cost with no beneficial outcomes or potentially cease all exotic afforestation (plantation and permanent) due to the added uncertainty and cost.

To achieve the desired outcomes it is imperative that any new regulation provides certainty, clarity and consistency across the country, with very clear delineation between different forest types with different effects.

QA9: What implementation support would be needed for option 2 (amend the NES PF to include exotic carbon forests)?

Again, the answer to this depends entirely on where the regulations land. If the regulations are clear and easily interpreted, with clear objectives and policies to guide decision making, little support should be required. However, if it is confusingly drafted and unclear, with wide discretion in how it is implemented then, clearly, the Ministry for the Environment (MfE) and/or the Ministry for Primary Industries (MPI) is going to have invest further effort in implementation support to achieve the intended outcomes. In FOA member experience, this has been a notable gap in implementation of the existing NES-PF. There have been numerous disagreements between industry and council staff over simple interpretation matters that could have been quickly resolved if the ministry was resourced to provide guidance in this space.

Forestry is not any more complex to manage than other rural land uses that Councils regulate under the RMA. Horticulture, dairy farming, factory farming and other farming activities are all regulated by councils which appear to cope with the intricacies of such a variety of land uses. Forestry is no different.

QA10: Do you agree with option 3 for managing the environmental effects of exotic carbon forestry (amend the NES-PF to require forest management plans for exotic carbon forests) Y/N Why?

No. As noted previously FOA is opposed to the NES-PF being used as a vehicle for rules for non-production carbon forests. Rolling the two together will almost certainly result in regulation that is not fit for purpose for either.

FOA does support appropriate controls on non-production carbon only forestry. However, to be able to provide informed comment on management plans the proposals would need to be clearer as to what requirements are proposed to be incorporated and under what legislation. It is noted that many of the matters that are raised as a concern relating to permanent forests fall under legislation outside of the RMA (FENZ and Biosecurity Act). Adding additional requirements administered by different regulators does not seem an efficient way of achieving the desired outcomes.

It is also noted that a management plan relating to the management of a growing forests, falls outside the scope of the current NES-PF which currently regulates only specific forestry activities associated with planting, silviculture, harvesting and replanting. There is no regulation of the activity for the growing of a forest under the NES-PF.

It is FOA's view that the most appropriate place for managing the concern that an owner may walk away from a permanent forest is under the ETS. Under ETS approvals there could be checks and balances to ensure that milestones that are proposed for a block are in fact being met, with penalties for not delivering against the transition model that has been submitted.

QA11: Do you agree that forest management plans should manage (choose one) (a) environmental effects only? Y/N or (b) environmental effects and forest outcomes, including transitioning from predominantly exotic to predominantly indigenous species? Y/N Why?

In FOA's view, under the RMA only (a) is of relevant concern. Provided permanent forests are established on appropriate geology and well managed, the reality is that their environmental impacts will be significantly improved from the prior land use (exotic pasture species grazed by exotic mammals) regardless of whether the tree cover is exotic or native. Water quality will improve, erosion will reduce, there will be increased habitat for a range of indigenous species including some threatened and at-risk species. Provided animal pest control is undertaken and there is native seed source, in time a native understory will develop and in the long term the canopy will transition to native species.

The logical place for managing the transition of exotic forests to native is under the ETS. If a forest owner is proposing a model of management, it seems reasonable that this should be formalized and monitored.

QA12: Based on your answer to the previous question, what content should be required in forest management plans?

Forest Management Plans could potentially cover management of pests, disease and fire, and if transition is part of the proposed model, then the processes that are planned to achieve this and proposed timing and milestones.

QA13: How effective would option 3 (amend the NES-PF to require forest management plans for exotic carbon forests) be in managing the environmental effects of exotic carbon forestry? (select from a range/scale not effective – highly effective) Why?

Again, the answer depends entirely on how the regulation is drafted, how clear it is and how it is implemented and enforced by District Councils. Requiring a management plan at the outset for permanent afforestation seems sensible, however clearly there are going to be limitations as to Councils ability to monitor and enforce such management plans in the longer term, given the lifespan of these forests. The limitations of the RMA to regulate matters covered by other legislation will also be a factor.

QA14: What implementation support would be needed for option 3 (amend the NES PF to require forest management plans for exotic carbon forests)

Again, the answer to this depends entirely on what the management plans are required to cover, the Councils' obligations for monitoring and enforcing them and indeed, which council that would be. District Councils would not generally have staff with the relevant expertise to monitor forestry management activities, let alone the capacity to do this.

Part B: Controlling the Location of plantation and exotic carbon afforestation to manage social, cultural and economic effects

Problem Statement

QB1: Do you agree with the problem statement set out above? Y/N Are there other things we should consider.

FOA agrees with the first part of the problem statement. Clearly, concerns have been raised regarding potential impacts of afforestation, particularly the change to the makeup of rural communities.

With regard to the second paragraph, FOA does not agree. Controls are already in place for management of afforestation for plantation forestry and, in our view, they are effective for managing the environmental impacts. FOA acknowledges that the controls do not incorporate regulations relating to social, cultural, and economic value judgements as they were based on the approach of existing District Plan provisions across New Zealand at the time the NES-PF was developed. Plantation forestry is recognized as one of the core land uses in the rural zone and almost universally provided for as a permitted activity in the general rural zone in District Plans throughout New Zealand. In developing the District Plan approaches, District Councils have considered the place of plantation forestry, including the social, cultural and economic aspects, and concluded it is a legitimate rural land use. The National Planning Standards also indicate that forestry is a usual productive land use in rural zones. The council's section 32 reports all to some extent cover the social and economic effects of their plan provisions. Using the RMA to pick winners in terms of the desirability of established rural land uses is going beyond the intent of the legislation and what has occurred to date.

The RMA already provides the ability for local authorities to consider cultural, social and economic effects even if this ability has not been exercised by them.

With regard to permanent forests there is no regulatory gap as the existing forestry objectives, policies and rules of a district council are still applicable. Most district plan alignments have not deleted existing production forestry rules, rather they have added advice that if a forestry activity comes under the NES-PF then the NES-PF regulations apply. If a council considers that further rules are required for permanent forests it may introduce the relevant changes. This process is already occurring in a number of Districts through proposed plan changes and district plan reviews.

FOA also disagrees with the last statement that existing controls under the RMA may not enable councils to manage the social, cultural, and economic effects on their communities of changing land use as plantation and exotic afforestation increases. For permanent forestry this is clearly incorrect. Councils can develop whatever rules they see fit under the RMA process. Clearly some small rural councils in New Zealand are not finding the process outside the realms of difficulty. Marlborough has introduced rules for permanent forestry, Far North District is proposing location changes, Waitomo district is proposing major location regulation and Waitaki District has is considering a plan change

QB2: Have we accurately described the social, cultural and economic effects of plantation and exotic carbon afforestation at the community level (Appendix D refers) Y/N? What other social, cultural or economic effects should we be aware of? Please provide evidence on the impact of these effects.

Appendix D gives a high-level overview of the social, cultural and economic effects of afforestation. Even from this table, it is clear that there is an element of judgement required to assess the various effects, with both positive and negative outcomes of afforestation in relation to just about every effect described. In some situations even maintaining the status quo will not prevent some of the effects described, such as rural depopulation and deterioration of rural infrastructure, which has occurred in rural areas with little forestry. Broader causes of change will need to be taken into account if unintended consequences are to be avoided.

The following general comments are noted:

- Rural population: For plantation forestry the impacts are arguably clearer than indicated by the table. The Price Waterhouse Cooper assessment undertaken for Te Uru Rakau¹ (the PWC Report) concluded that overall employment from forestry and associated wood processing is approximately double that of sheep and beef farming (38 FTE's in forestry per 1,000 ha cf 17 for beef and lamb). The issue is value judgements about the demographics of the workforce and where these people reside – on farm or in nearby locations such as rural towns. Regardless of their employment, clearly these people will continue to support local services such as schools. In areas where there is a sufficient area of forest to support ongoing consistent forestry work, and ideally wood processing, the benefits are generally greater than in areas with only small isolated areas of forestry on farms where the work tends to be more episodic and influenced by log prices.
- Rural infrastructure: The summary implies that rating is based on population levels which is incorrect. Rating in NZ is based on either land or capital value, both of which will be retained if not improved due to higher rural land values brought about by forestry opportunities.
- Cultural wellbeing: This is a subjective assessment best commented on by those affected. However, clearly plantation and permanent forests can provide a range of cultural benefits arising from active and passive recreation, hunting, Rongoa collection, access to historical sites, etc, that often will not be available on farmland.
- Health and wellbeing: Again, this is highly subjective. The table notes the negative mental health and wellbeing associated with afforestation as a result of 'rapid change beyond individuals' control'. During the period of large-scale deforestation in the period up to 2008, there was very similar distress relating to the change of land use from forest to farmland, with many of the same issues raised, along with calls for regulation to stop it occurring (which subsequently has occurred). This is an issue that needs to be addressed in conjunction with support services rather than attempting to constrain land use or any other change that affects a community.
Given the high involvement of Māori in all aspects of forestry, we would question the assertion that afforestation will result in Māori communities suffering negative impacts on health and economic wellbeing where there are inequities. In areas such as Northland, Eastern Bay of Plenty and East Coast with high Māori populations, forestry is a key employer. Forestry also unquestionably contributes in many communities to health and wellbeing through many diverse recreation opportunities. For example, Woodhill Forest west of Auckland, Whakarewarewa Forest in Rotorua and Hanmer Forest, North Canterbury are key regional recreation destinations hosting large numbers of visitors every year.
- Contribution to local and regional economies: The table correctly identifies the significant economic benefit of plantation forestry. The PWC Report concluded that the full forestry value chain returns significantly greater returns than sheep and beef on a per hectare basis (\$4.6M per 1,000 ha for forestry cf \$1.7M for sheep and beef). Again, the benefits will be greater in regions with sufficient area of forest to support ongoing consistent forestry work and ideally associated wood processing. Constraining forestry to small, isolated areas of forestry on farms will prevent this occurring.

Māori communities have significant potential to benefit from forestry as evidenced by the position taken on permanent forestry by Nga Pou a Tane.

¹ Price Waterhouse Cooper, Economic Impact of Forestry in NZ, Te Uru Rakau, May 2020.

- Employment opportunities: The description of the impacts for plantation forestry is one sided - noting only the loss of employment associated with farming without noting the corresponding increase in overall work from forestry related employment (in forest and support services). As noted above, the PWC Report concluded approximately double the employment in forestry per hectare compared to farming, the only difference being where these people reside.

QB3: Do you agree that the social, cultural, and economic effects of plantation and exotic carbon forests should be managed through the resource management system? Y/N Why?

Yes. As it currently stands under the RMA, section 5, requires the promotion of the sustainable management of natural and physical resources, which includes enabling people and communities to provide for their social, economic and cultural wellbeing and for their health and safety, within the constraints of achieving a range of environmental outcomes. So clearly, the intention is that social, economic, and cultural wellbeing is taken into account when developing plan provisions. While possibly not explicit, social, economic and cultural aspects have been a primary consideration in the development of regional and district plans. Councils must identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of any planning provisions (section 32). Some have argued they have been given too high a priority at the expense of the environment and this is one of the key drivers for the current RMA reform - to give environmental outcomes a higher priority.

The issue is the proposal to require council staff to make highly subjective judgements around the relative social, cultural and economic values of land uses based on preferences of local communities, which will inevitably favour the status quo regardless of how sustainable that is. The difficulty is going to be how this is balanced against clear environmental and economic benefits arising from afforestation – both at a local and national level.

Abdicating responsibility for national policy objectives to local authorities is inappropriate and will compromise such objectives.

The discussion document notes that Councils have expressed the difficulty of developing and applying rules in this area. The reason for this is that it is complex and will require subjective judgements that almost inevitably result in protracted litigation if devolved down to a consenting process. Consenting for every afforestation project, regardless of scale or location, would appear to be going in the exact opposite direction to the proposed resource management reforms, seeking to achieve long term integrated land-use planning and environmental outcomes while reducing reliance on consent-based decisions. The uncertainty and variability of outcomes under the local consent model was what drove the development of the NES-PF. It would seem perverse to now use the NES-PF to drive such an outcome.

Options to control the location of plantation and permanent exotic afforestation

QB4: What is your preferred option for managing the social, cultural, and economic effects of plantation and exotic carbon afforestation? Select from Option 1: (a local control approach); option 2 (a consent requirement through national direction); No preference; I do not support either of these options, why?

FOA does not support either option as presented.

As noted multiple times, planted production forestry and non-production exotic carbon forestry are not synonymous. Asking about both in the same questions is effectively ensuring that the feedback from this consultation process will be uninterpretable and meaningless.

Councils have the legal ability now to control social and economic impacts of any activity in their district. In principle FOA opposes extending the ability of councils to introduce additional rules for plantation forest afforestation on the basis of social, cultural, and economic effects. Section 5 of the RMA is more than adequate. The NES-PF drew from rule frameworks in existence at the time the regulations were developed. At that time plantation forestry was universally allowed for as a permitted activity in the general rural zone in District Plans, subject to conditions. That has remained the case under the NES-PF. Clearly, social, economic and cultural considerations were taken into account when developing District Plans, as required by the RMA. Extending the discretion for councils to over-ride an NES-PF on such subjective grounds would, in our view, be a significant backward step, and contrary to the goals of the RMA reform to improve national consistency, provide certainty and reduce consenting. If this is proposed as the new model for land use change to forestry, then logically it should apply universally to all primary production and not just forestry as all land uses have an impact, and most have a greater impact than forestry.

Option 2 proposing consenting for all afforestation, is strongly opposed. This would be contrary to the goals of RMA reform. It would have the potential to significantly reduce if not halt afforestation projects, jeopardizing New Zealand reaching our climate change goals. It would also be in direct conflict with the NES-F which currently provides that any conversion of plantation forestry over 10 hectares to pastoral land use is a discretionary activity, with matters for discretion that are simply unachievable, effectively prohibiting forest to farm conversions. To then propose a consenting regime for the exact opposite land use change seems contradictory and confused, demonstrating siloed thinking, if not simply regulating to maintain the status quo.

QB5: How effective would option 1 (a local control approach to managing the location of plantation and exotic carbon afforestation) be in managing the social, cultural and economic effects of plantation and exotic carbon afforestation? (select from a range/scale of not effective – highly effective) Why?

Option 1 is, in reality, the status quo. A number of District Councils are in the process of introducing rules for permanent afforestation. It is too early to say how effective these rules will be in managing social, cultural and economic effects. Of relevance, only very recently, some regional councils have regulated the exact opposite change in land use (forest to farm conversions) as has the NES-F. .

QB6: What impact would option 1 (a local control approach to managing the location of plantation and exotic carbon afforestation) have on the rate of and pattern of plantation and exotic carbon afforestation?

This cannot be answered with any certainty as it entirely depends on what rules councils put in place and the decisions that they make on resource consent applications. Should a discretionary consenting regime be introduced, it will immediately introduce uncertainty to afforestation projects, making buyers wary of entering into purchase agreements without the necessary consents being in place. FOA is already aware of examples of forestry investment that have been put on hold because of the uncertainty created by the current proposals. These examples include

The uncertainty associated with unknown local level controls, and costs, will result in reduced forestry investment interest even before an application to plant.

large and small forest owner investors. The uncertainty, and inconsistency, associated with local control will, in some cases, mean that capital will not be made available to even proceed with applying for consent. The full extent of the impact on investment will depend on the regulations proposed. It could unquestionably have a significant impact on the Government's afforestation targets.

Past and present experience clearly shows that resource consents for afforestation is a major deterrent. In the 1970s some rural counties required conditional resources consents (equivalent to discretionary) for afforestation of commercial forests. This limited the growth of forestry in areas with more stringent rules such as Taumaranui County.

Today the NES-PF afforestation requirements of forestry in red zones has brought such activity nearly to a halt.

QB7: What are the benefits of option 1 (a local control approach to managing the location of plantation and exotic carbon afforestation)?

The key benefit of option 1 is that it will not impose consenting requirements across the whole country, including councils who do not wish to regulate afforestation, imposing additional costs and regulatory burden on councils for dubious benefits.

QB8: What are the costs or limitations of options 1 (a local control approach to managing the location of plantation and exotic carbon afforestation)?

The key cost is clearly the costs associated with councils developing individual plan changes, should they wish to introduce district plan rules for afforestation. As noted in the discussion document, it would also clearly undermine the benefits of the NES-PF seeking to develop a consistent set of regulations for forestry across New Zealand.

QB9: If option A (a local control approach to managing the location of plantation and exotic carbon afforestation) is progressed, would making plan rules to manage the social, cultural and economic effects of plantation and exotic carbon afforestation by controlling its location be a priority for your community or district? Choose from a range, Not a priority to high priority. Why?

This submission is made on behalf of FOA and, as such, is not specific to one community or district.

QB10: What implementation support would be needed for option 1 (a local control approach to managing the location of plantation and exotic carbon afforestation)?

Developing and administering a District Plan is a core function of District Councils. Councils would require additional resource if they propose additional consenting for afforestation.

More than implementation support is required. **The NES-PF does not include any policies or objectives. Either a National Policy Statement (NPS) or something within the RMA reforms would be required to assist councils in processing a discretion.**

QB11: Are the variables outlined above (type of land, scale of afforestation, type of afforestation ie plantation, exotic carbon, transitional) the most important ones to consider? Y/N. What if any, others should we consider.

Again, the document starts with the assumption that there is a case to answer for all forestry and that these variables should be considered for consent requirements.

The variables and approaches being considered go well beyond anything that has ever been regulated in New Zealand in relation to afforestation. To date the planting of trees has been considered as

positive for the environment and for communities, to the point that afforestation has been universally encouraged through farm plans and even financially incentivised by central government and local authorities for many decades. The NES-PF stepped beyond any District Plan at that time in making afforestation on red zone land a discretionary activity.

It seems extraordinary to now be in a position where it is contemplated that all afforestation be a controlled or discretionary activity, at the same time as exotic forest deforestation is also a discretionary activity under another NES.

Many of the variables proposed are actually contrary to achieving good environmental and economic outcomes. For example, the proposal to require consents for afforestation of lower LUC classes will potentially push forestry onto more erosion prone land, increasing risk at harvest time. This is the complete opposite approach to that of the NES PF that requires consent for afforestation of red zone land.

The proposal to allow only small forests will clearly reduce the economic returns from blocks, and will also make it more difficult to achieve a consistent supply for local processors. Ironically smaller blocks often have significantly higher environmental risks where trees are planted on only the highest LUC parts of properties and therefore highest risks. This can constrain the location of infrastructure to suboptimal locations and reduces harvesting configuration options, thereby increasing risks.

The proposals to have more permissive regimes for short rotation forests (for biofuels) as compared to longer rotation and permanent forests is effectively regulating in inverse proportion to environmental risk, which does not seem consistent with the principles of the RMA.

We submit that it is critically important that any future regime has a long phase-in, or a grandparenting provision to allow land purchases that are pending in the (sometimes slow) Overseas Investment Office approval process can go ahead, noting that it typically takes three to four years from time of approval and unconditional purchase to actually planting trees. Forestry Advisors within MPI will be aware that seed supplies are tight with seed collection taking a year and then another year for propagation and growing-on in nurseries or, for Douglas-fir growers, another two years. Labour constraints in both nurseries and in planting crews may cause further delays. Planting a typical 2,000 ha ex-farm property typically takes a further three years. There are no short cuts for good forest management, so it becomes critically important that a forest owner intent on afforestation does not end up with a stranded asset caused by a Resource Management or Spatial Planning Act intervention of the type that MfE and MPI seem to be suggesting here.

Given the current high regulatory uncertainty faced by investors as prospective forest owners because of the transition from the RMA and creation and adoption of Regional Spatial Strategies overlain by the current NES-PF review, we recommend that grandparenting of afforestation rights be achieved by way of a Certificate of Compliance obtained no more than one year prior to the purchase of land under consideration for purchase.

QB12: Which afforestation proposals should require consent? (Please consider factors such as the type of land, the scale of afforestation, the type of afforestation (plantation, exotic carbon, transitional) and other factors you consider important.

As noted in our previous submissions, FOA does not support the use of the resource consent process as a “catch all” for exotic afforestation. The benefits of afforestation, especially on the land use classes typically afforested, far outweigh any adverse effects.

QB13: How effective would option 2 (a consent requirement through national direction to control the location of plantation and exotic carbon afforestation) be in managing the social, cultural and economic effects of plantation and exotic carbon afforestation? (select from a range/scale not effective – highly effective) Why?

Again, it is impossible to assess this without seeing the detail of the proposed regulation and knowledge of how it will be implemented by councils. Regardless of the approach, it needs to be recognized that any decisions made in this space, whether they are to allow or prevent afforestation, will inevitably have both positive and negative effects from a social, cultural and economic perspective. As it currently stands the economic impacts of consenting and potentially preventing afforestation will almost certainly be negative.

QB14: What impact would option 2 (a consent requirement through national direction to control the location of plantation and exotic carbon afforestation) have on the rate and pattern of plantation and exotic carbon afforestation? Please explain and provide evidence.

This depends entirely on the form of regulation. If resource consents are required only in some locations or on some land use classes, this will inevitably push afforestation projects to areas that are permitted to avoid uncertainty and regulatory cost. This has occurred in the past under the Town and Country Planning Act where afforestation tended to occur in those Districts with more permissive approaches to forestry. It is also occurring more recently with the NES-PF deterring afforestation on red zone land.

If blanket, across the board consenting is required for all afforestation, this will inevitably deter afforestation projects, particularly if any resource consent applications are turned down. It will introduce uncertainty and add cost, which can only serve to deter afforestation and undermine the Government's afforestation targets.

QB15: What are the benefits of option 2 (a consent requirement through national direction to control the location of plantation and exotic carbon afforestation).

The benefit of option 2, is that it avoids the cost of councils individually developing a plan change to introduce consenting for afforestation. Clearly this is only a benefit if the council actually sees a need to consent afforestation. If not, this provides no benefits and simply adds bureaucracy, cost, and additional workload to the council and all stakeholders including NGOs.

QB16: What are the costs and limitations of option 2 (a consent requirement through national direction to control the location of plantation and exotic carbon afforestation)?

The costs of option 2 are entirely dependent on the extent of consenting proposed and the activity status. If across the board consents are required, particularly if they are discretionary, then the costs are almost open ended - in terms of the costs of processing and granting resource consents. If afforestation projects are prevented or deterred, this will obviously have economic costs to landowners in terms of the options for using their land, the economic returns available, and the sale value that can be obtained. If afforestation is significantly deterred to the point that New Zealand's climate change plan projections are not met, then there will be substantial additional costs to New Zealand in meeting our climate change commitments, potentially through purchase of overseas credits.

Lack of afforestation will also substantially increase the costs of meeting freshwater quality objectives in some regions, as forestry offers a low cost (potentially cost neutral or even positive) opportunity to reduce the loss of sediment, nutrients, and *E.coli* from farmland. If afforestation is deterred, then far

more costly alternatives will generally be required in terms of changes to farming practices and reduced stocking rates.

Before such rules are introduced, a full and robust CBA will be required to ensure these significant costs are outweighed by benefits.

QB17: What are the most important and urgent, social, cultural and economic effects of plantation and exotic afforestation that you would like to see managed under the resource management system? Where and at what scale do these effects need to be managed?

Plantation forestry is a legitimate and viable rural land use with significant positive social, economic, and environmental effects. The most important effect of afforestation is the ability of plantation forestry to provide New Zealand with the possibility of meeting its greenhouse gas emission targets. It will also make a significant contribution to achieving freshwater quality aspirations.

The concerns being expressed in some sectors have exaggerated both the scale and risks associated with permanent exotic forests. Agricultural land will need to be afforested with exotic or indigenous species at rate of 35,000 ha per year if we are to meet the Government's Emissions Reduction Plan targets. What is most important is not the creation of a regulatory regime that risks undermining achieving these targets but in the establishment of the process and support necessary to facilitate this land use change and any local community impacts. There is no justification for one land use to be singled out and left to the discretion of local authorities when there are already mechanisms in place to deal with effects from all land uses.

QB18: Should this be done now under the RMA, or later under the proposed National Planning Framework and NBA Plans?

Given the proposed regulation involves balancing social, cultural and economic considerations along with environmental outcomes, the overarching purpose of the Act becomes critical. It therefore seems premature to be introducing regulations under an Act that is soon to be replaced by a completely different framework and, therefore, will inevitably require the regulations to be revisited. It would seem to make sense to wait at least until the replacement Bills are introduced so that the new approach can be considered in the development of any new regulations.

QB19: Would standards in an amended NES-PF need the support of national policies and objectives? Y/N.

Yes. The NES-PF drew heavily from existing regional and district plans that were already underpinned by policy and objective frameworks. Introducing rules for permanent afforestation for social, economic or cultural reasons steps outside of anything that has been regulated to date and therefore no such policies and objectives exist. It will also require subjective value judgements to be made about the relative benefits of competing land uses and weighing up local effects with national objectives. It is therefore imperative that this is underpinned by national policies and objectives to provide councils guidance on decision making.

QB20: What implementation support would be needed for option 2 (a consent requirement through national direction to control the location of plantation and exotic carbon afforestation)?

Again, that depends entirely on the clarity and complexity of the rule framework proposed. Assessing and granting of resource consents under the RMA is a routine council activity. That said, consenting decisions in this space are more complex and subjective than is generally the case, and inevitably will be contentious. Guidance and support will be required to achieve the desired outcomes.

Part C: Improving Wildfire Risk Management in All Forests

QC1: Do you agree that wildfire risk management plans (WRMPs) should be included in the NES-PF? Y/N Why?

No. FOA supports the intent and outcomes of raising awareness of wildfire risks and promoting measures that can be considered and undertaken to mitigate wildfire risks. FOA does not support the inclusion of Wildfire Risk Management Plans (WRMPs) under the NES-PF as is being proposed. This is not the appropriate mechanism through which to deliver wildfire risk management or awareness, nor will the proposals meaningfully contribute to a reduction in the environmental consequences of wildfires in the landscape.

The proposal states that the focus “...is to reduce the environmental effects that a wildfire in a forest might pose”. Further it proposes that a national approach “...should raise wildfire awareness of all landowners with forests or woodlots and include planning where forests go, how they are established, and ongoing management.” The risks and consequences of fire are a landscape issue that span multiple land uses. Therefore, wildfire risk management approaches should aim to address wildfire risk at the landscape level and take a strategic and coordinated approach in doing so rather than focusing on a single land use type or property because a convenient opportunity has presented itself.

The proposal appears to be “a solution looking for a problem”. The use of regulations as is proposed should be a last resort and at the very least must be evidence based to meet Operating Principle 13 (3) (a) of the FENZ Act 2017 “...the importance of providing evidence-based, efficient, and effective services”. The discussion paper offers no evidence firstly that any effort has been made with the target audience to achieve the proposed outcomes through advocacy, engagement, education or communication, or secondly that the proposed requirements for WRMPs would have had any demonstrable material impact on any wildfire events that have occurred in plantation forestry environments within New Zealand.

The consequences of wildfire are broad and, *inter alia*, include the potential negative impacts on the environment. While FOA acknowledge that this proposal is seeking to take advantage of the opportunity presented by the review of the NES-PF and exploiting the environmental impacts of wildfires in forests to enable this, it is not considered that the NES-PF is the right mechanism through which to manage wildfire risk. Firstly, it confuses accountabilities and responsibilities for fire risk management, it also fails to address the risks at the landscape level, further it is unclear how what is being proposed will deliver a reduction in environmental consequences of wildfire.

FENZ has the statutory responsibility to “protect and preserve lives, property and the environment” (FENZ SOI 2020-2024)². “Fire and Emergency New Zealand was established on 1 July 2017 with the principal objectives to reduce unwanted fires; and in relation to its main and additional functions to protect and preserve life, prevent or limit injury, and prevent or limit damage to property, and the natural environment.” (Plantation Forestry Rural Fire Control Charter – June 2021). Including fire risk management under the NES-PF under the guise of environmental protection runs the risk of confusing this statutory responsibility and complicating its delivery across multiple legislative and regulatory frameworks and agencies. This would also contribute significantly to uncertainty within industry as to

² <https://www.fireandemergency.nz/assets/Documents/About-FENZ/Key-documents/FENZ-Statement-of-Intent-2020-24.pdf>).

the lead agency and how to address multiple and potentially conflicting guidance and risk management and regulatory requirements.

The proposed approach would place an unfair and inconsistent burden of regulation, planning, administration and therefore cost on forest owners and managers, as well as councils, yet does little to materially address the risks and consequences, which are arguably the same for other land use types. An example of the inconsistency that this will generate would be that a native forest neighbouring an exotic plantation forest (regardless of crown, local government or private ownership), and which likely poses the same fire risk, and arguably a much greater environmental consequence from a wildfire event, would not require a fire plan, while the exotic forest would, and they would be required to address the fire risk both to, and from, their neighbours! The same could be said for say a Manuka plantation planted for honey, or any other land use type that could be fuel for a wildfire.

The figures below highlight the proportion of area burnt by land use for the last two fire seasons (it should also be noted that there may be some areas burnt that have been incorrectly attributed to forestry, i.e., wilding stands). This combined with the fact that more forest area is burnt as a result of fires originating outside of the forest than from fires originating inside of forests, further supports our view that fire risk management should be addressed at the landscape level.

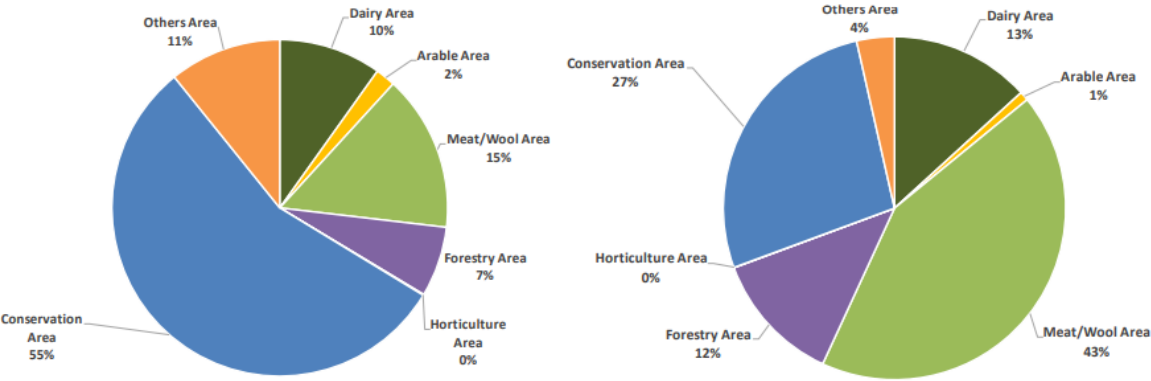


Figure 5. Area burnt by land use, for the 2019/20 season (left) and 2020/21 season (right).

(FENZ, 2021)³

One of the policy objectives of the NES-PF is to “Increase the efficiency and certainty in the management of plantation forestry activities under the RMA”.

QC2: Do you agree that the role of councils in monitoring the WRMP should be limited to ensuring that a plan has been developed? Y/N If not, what should the role of councils be?

No. FOA does not support the proposal and therefore do not consider that Councils should have any role in administering fire risk management activities, as this is very clearly FENZ responsibility.

The lack of detail and clarity provided in the proposal as to the fire plans, their purpose, content, who the intended audience is and how they might be used, compounded by the acknowledged lack of

³ FENZ (2021). New Zealand Wildfire Summary 2020/21 Wildfire Season Update: 31.

capability and capacity in local and regional government to review and approve these, does not provide for any certainty in the value of the process and as a result the management of plantation forestry activities. Nor does it provide for confidence that these will make a meaningful contribution to the stated objectives and outcomes being sought. In contrast it raises uncertainty and some concerns as to how these fire plans may be used, and/or interpreted (i.e., for purposes not initially intended by their proposed inclusion).

Further, with regards to effectiveness and efficiency the proposed process is likely to generate several thousand fire plans, each of which will be specific to a particular forest, will likely be compiled by people with little knowledge or expertise in fire risk management, and if these are reviewed will more than likely be done so both in isolation and more than likely by people who have little knowledge or expertise in fire risk management. We would have significant concerns around the effectiveness and efficiency of the approach as it has been proposed.

As is noted in the proposal, most large forest owners are likely to already have existing fire risk management plans, with many also maintaining dedicated fire risk management capability, assets and infrastructure. Therefore, the benefits as well as implications of what is proposed for them is likely to be minimal. However, under this proposal they will be required to provide further detailed administrative paperwork for each of their forests that would serve little, to no, benefit to their approach to fire risk management, but add complexity and cost.

For smaller forest owners and those larger forest owners and managers who do not currently have fire risk management plans the potential implications will be significant. Most will have very little knowledge of fire risk management, will likely have little capability and capacity to meaningfully develop fire plans themselves, and as a result if mandated to have fire plans will likely need to engage “experts” to assist them or to deliver these on their behalf which is likely to be a significant cost burden. Further the issue of scale also comes into play and needs to be given consideration. While fire risk management mitigation practices can more easily be absorbed in larger forested areas with relatively minimal proportional impact, for smaller forests the relative impact of potential mitigations can become proportionally significant relative to forest size (i.e., requiring fire breaks in a small forest can impact on the viability of that forest as an investment due to the removal of productive forest area), and therefore prohibitive and impractical.

Responsibility and accountability for rural fire moved to Fire and Emergency New Zealand in 2017 with the commencement of the FENZ Act 2017. The development of fire risk management guidance and supporting communications should be under the leadership of FENZ (supported by MPI, FOA, and other relevant rural land user representative bodies) that is targeted toward relevant rural land user audiences. This would be more effective and efficient at achieving the desired outcome of raising awareness and consideration of risk management at the landscape level (including forestry and other land uses) and therefor contribute more meaningfully to reducing the environmental effects that wildfire in the landscape might pose.

FENZ is currently undertaking a National Wildfire Risk Analysis, and it would be more consistent, efficient, and effective for the outcomes that are being sought by this proposal to be delivered under this framework, by the agency with responsibility and accountability for wildfire risk management. Local community risk managers, supported by the other relevant agencies and relevant industry stakeholder representative bodies (i.e., for the forestry sector: Te Uru Rakau, FOA, New Zealand Farm Forestry Association (FFA), regional Wood Councils, etc.) would be far better placed to drive local community fire risk management plans and strategies and would be more consistent with the purpose of FENZ national, and local advisory structures.

It is noted that the FOA has already developed and published Forest Fire Risk Management Guidelines that are freely available. These have been acknowledged and recognised by FENZ as good practice guidelines. The purpose of these guidelines are to “give forest owners, large and small, the opportunity to assist FENZ in meeting its obligations under the Fire and Emergency Act 2017”.

Context: why is wildfire an issue in our forests

The statement “Since 2000, the number of wildfires across all land uses has climbed steadily to a peak in the 2019/20 season” is misleading and does not appear to be supported by the data. Refer to the summary below from (FENZ 2021), which appears to suggest that since the 2000/2001 season, aside from some fluctuations that the number of wildfires appear to have remained relatively stable on average rather than “...climbed steadily to a peak in 2019/20 season”. Rather the steady increase seen from the 1985/86 season appears to have stopped increasing at approximately 2002/03 after which it appears to have plateaued (on average).

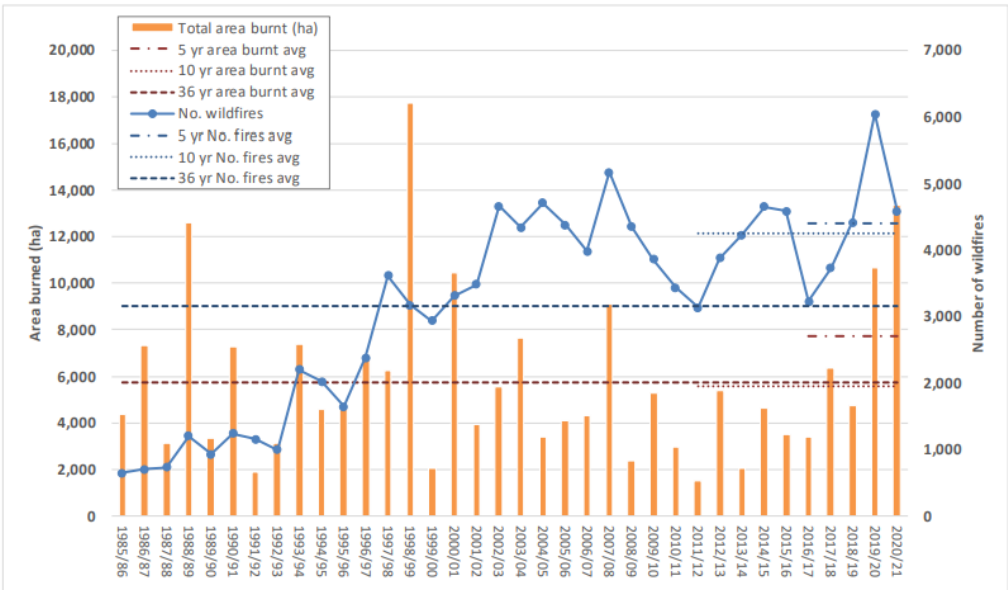


Figure 2. Total number of wildfires (blue line) and area burnt (orange bars) for the last 36 years of wildfire records. Note: this dataset does not include vegetation fire non-responses or false alarms that required no action.

“All forest are at risk - ...” this is a broad and generic statement. The fire risk to different forests will be different across locations, management strategies, age classes and forest types. However, FOA agrees that all forests and land use types are at risk from wildfires. Therefore, FOA question why only exotic plantation forests are being singled out for the proposed risk management approach. How will native plantation forests, permanent native carbon forests, and native tree plantations for purposes other than harvested wood and carbon (i.e. manuka, kanuka etc) be addressed, given the wildfire fire risk profile for these will not be dissimilar to exotic plantation forests?

What are the costs of wildfire – Table Page 36

It is unclear what the purpose is for the inclusion of this table. It appears to include a somewhat random and confusing mix of impacts/cost across land use types and government outcomes, but then focuses specifically on some forestry costs, i.e., environmental effects appear to all be generic to any land use types, while economic and social cost appear to specifically focus on forestry economic costs. This results in the misleading impression that these are all due to wildfires in exotic plantation forests, which is not the case.

FENZ

Paragraph 1 – FENZ statutory responsibility is much broader than just promoting fire safety and providing guidance on the safe use of fire as a land management tool; under the Act FENZ statutory responsibilities are to “protect and preserve lives, property and the environment” (FENZ SOI 2020-2024)⁴ -

The FENZ Act 2017 very clearly articulates FENZ Principal Objectives, Functions and Operating Principles, as follows:

Principal objectives

10 FENZ’s principal objectives

The principal objectives of FENZ are—

- (a) to reduce the incidence of unwanted fire and the associated risk to life and property;
- (b) in relation to the main functions of FENZ under section 11 and the additional functions of FENZ under section 12,—
 - (i) to protect and preserve life; and
 - (ii) to prevent or limit injury; and
 - (iii) to prevent or limit damage to property and land; and
 - (iv) to prevent or limit damage to the environment

Compare: 1975 No 42 s 20(2)(a)

Functions

11 Main functions of FENZ

- (1) FENZ must carry out the main functions specified in subsection (2).
- (2) The main functions are—
 - (a) to promote fire safety, including providing guidance on the safe use of fire as a land management tool; and
 - (b) to provide fire prevention, response, and suppression services; and
 - (c) to stabilise or render safe incidents that involve hazardous substances; and
 - (d) to provide for the safety of persons and property endangered by incidents involving hazardous substances; and

⁴ <https://www.fireandemergency.nz/assets/Documents/About-FENZ/Key-documents/FENZ-Statement-of-Intent-2020-24.pdf>.

Operating principles

13 Operating principles of FENZ

- (1) The board must formulate the operating principles of FENZ in accordance with this section.
- (2) The operating principles must—
 - (a) be aimed at guiding FENZ; and
 - (b) be designed to assist FENZ—
 - (i) to carry out its functions effectively and in a co-ordinated manner; and
 - (ii) to work co-operatively and collaboratively with other relevant organisations; and
 - (iii) to carry out consultation with relevant stakeholders and organisations.
- (3) In formulating the operating principles, the board must take into account the following matters:
 - (a) the importance of providing evidence-based, efficient, and effective services;
 - (b) local interests and differences;
 - (c) the importance of transparency in decision making;
 - (d) the importance of engagement with—
 - (i) FENZ personnel;
 - (ii) the associations or unions that represent or advocate on behalf of FENZ personnel;
 - (iii) local advisory committees;
 - (iv) organisations referred to in section 12(4).

Paragraph 2 suggests that there is currently no mechanism to know where smaller plantation forests are and when they are being established, and that FENZ cannot easily engage with all these owners. This statement appears to contradict and potentially undermine the justification for this proposal. The NES-PF in its current form does provide a mechanism to allow for the identification of plantation forest locations at the time of their establishment. These notices are held by district and regional councils. Such notices are public documents and could be accessed by FENZ. Including a requirement for a fire plan would therefore require further notice provisions be added, which would add to the administrative load of councils and foresters. This information is most likely there, in various spatial or GIS systems, but that the systems and process for making this information available for FENZ in a meaningful and timely way have not been prioritised. The value of including the proposed fire plans under the NES-PF which would be subject to the same system and process constraints is therefore questionable.

It was disappointing how little commentary or value was attributed to the Forest Fire Risk Management Guidelines 2018, given the nature of the wildfire management proposal. These guidelines are directly relevant and the purpose behind their development was to “give forest owners, large and small, the opportunity to assist FENZ in meeting its obligations under the Fire and Emergency Act 2017” and given that FENZ has acknowledged these as good practice guidelines. Both FENZ and Te Uru Rakau have, under the Charter, agreed to support and promote these guidelines which provide operational guidance and information to promote and ensure efficient and effective fire management, including risk reduction and protection, on plantation forests.

The FOA/FFA Joint Fire Committee has identified the need to review and update these guidelines given they were published nearly four years ago. This presents an opportunity to promote and raise awareness of fire risk management considerations to forest owners and managers and include guidance and templates to enable them to proactively do so.

Reference is made to the extent of both the Department of Conservation and the New Zealand Defence Force's significant land and vegetation management responsibilities, this would suggest that fire risk management is a significant issue that each agency has accountability to mitigate and manage. However, no mention is made in the discussion document as to whether either agency are required to meet similar requirements to those being proposed for exotic plantation forests, despite the risk being similar if not much more significant. This again highlights the advantages of addressing landscape fire risk management at local or regional level, which would support our position.

Councils

It is unclear what the intent was behind including this section beyond highlighting what role councils do or do not play in the fire risk management space and that this appears highly variable. The inclusion of references to boundary setbacks seems a somewhat arbitrary detailed inclusion that offers little value to the proposal.

What is the regulatory approach to fire?

The FENZ Act 2017 is very clear about who the lead agency is for fire risk management - Fire and Emergency New Zealand. The Act sets out the framework within which they are to deliver their core functions, and that they have a clear mandate to work with other agencies, their sector partners, stakeholders, and communities. It is noted that significant changes resulting from the formation of, and extensive transition to, FENZ has had a major impact on levels of confidence in FENZ' competence, capability and capacity for effective rural fire risk management. However, FENZ is making significant inroads and progress towards establishing the necessary forums, relationships and partnerships it requires to deliver its statutory and mandated responsibilities. Introducing another agency (local councils) would be inefficient, add to the complexity and confusion and be unhelpful to FENZ and forest companies or owners.

QC3: Do you agree that a five-year review requirement is appropriate for WRMPs? Y/N Why?

No. Note the points raised previously in this submission. FOA does not consider that WRMPs, as has been proposed, will provide any meaningful impact on fire risk management or environmental outcomes.

QC4: Do you agree that a module for a WRMP that is consistent with farm plan templates could be used for farmers with forests to plan for managing wildfire risk? Y/N If no, please provide reasons.

No. Effective fire planning must be delivered at a landscape level rather than the property by property level.

QC5: What implementation support would be needed for this proposal?

None. FOA does not support this proposal proceeding. Rather FENZ should be better supported by provision of maps, property data, and land use information along with ownership and management details to enable them to deliver their statutory responsibilities.

Part D: Enabling foresters and councils to better manage

Wilding conifer risk management

QD1: Do you agree with Proposal 1 for managing wilding risk (update the Wilding Tree Risk Calculator and guidance, and require the submission of a standardized worksheet assessment to councils at least 6 months prior to planting)? Y/N If not explain why.

Without seeing the specific changes to the calculator, it is not possible to confirm support.

With regard to notice, FOA supports in principle the changes to allow notice to be provided further in advance. The requirements in the NES-PF that the notice can only be provided between 20 and 60 days prior to start of work, is overly restrictive, particularly given that parties undertaking afforestation need certainty well ahead of time to purchase land and order tree stocks.

To the contrary, if a landowner makes the decision to plant trees just prior to the planting season, and can obtain tree stocks, it seems overly bureaucratic to require them to wait six months for a council staff member to assess a wilding risk calculation that in reality generally only takes 15 minutes to review – particularly if the wilding risk is low which is commonly the case (for example, *Pinus radiata* surrounded by grazed land or established native forest).

QD2: Do you agree that extending the notification period for wilding conifer scores to no sooner than 6 months, and no later than 8 months before afforestation begins is an appropriate length of time? Y/N If not, what timeframe would you suggest and why?

No. A six-eight month period is still overly restrictive, giving only a narrow two month window to align the notice with planting timing. Should planting be held up for any reason (weather events, availability of tree stocks or planting crews) it is conceivable that the timing would get out of sync putting the process into a technical non-compliance for no material reason.

Provided there is no change to the Wilding Risk Calculator or surrounding land use (generally the case), the wilding risk calculation could be carried out and submitted for consideration at any time ahead of planting. Allowing this notice to be made well ahead of time would give potential purchasers of land for afforestation certainty before they go ahead with land purchase.

Conversely as noted above, we question the need for a six month window prior to afforestation, given the task of reviewing a wilding risk calculation is generally not time consuming. For larger scale projects a six month window would generally be workable given the time to secure land and tree stocks and prepare land for planting. But for the isolated instances where planting decisions are fast tracked, we can see no logical reason to regulate a six month wait period before planting could commence. Obviously if consents are required for afforestation this becomes less relevant as the calculator would become part of the consenting process, and delays will be almost inevitable.

QD3: Do you agree with Proposal 2 for managing wilding risk (require all forests to assess wilding tree risk at replanting)? Y/N If not please explain why?

No. FOA obtained a legal opinion from a resource management barrister as to the legal implications of the proposal and it is attached. In brief, FOA considers that the proposal is not consistent with the provisions of the RMA that protect existing use rights and is not an efficient and effective way to meet the objective of proposal 2.

Initiatives to support wilding conifer control such as updating the risk calculator and associated guidance should be undertaken.

Under Regulation 77 replanting is a permitted activity. If Regulation 79 is not complied with then replanting is a restricted discretionary activity.

When the NES-PF was developed, foresters were held to have existing use rights as long as the activity was of the same scale and intensity. It is noted that “same scale and intensity” includes an activity of less scale and intensity. The concern now appears to arise from changes in adjacent land use rather than a change to forestry activities. This concern does not take into account the existing use right test under s10 (1) (a)(ii) RMA directed at the effects of the activity itself rather than their impact on the off-site receiving environment.

An Interim Regulatory Impact Statement (IRIS) has been prepared. FOA is concerned with the findings of the IRIS and its dismissal of the existing use rights to replant. The IRIS considers that the resource management efficiency and effectiveness is better than the status quo without assessing:

- (a) How this is impacted by existing use rights, including the complexities for parties in managing such rights;
- (b) Whether it is disproportionate to the scale of the issue; and
- (c) whether it accounts for the costs of foresters having to assert that existing use rights apply.

The attached legal opinion sets out more fully the basis for FOA’s reasons for not supporting proposal 2.

An additional concern is the statement in the bullet point for proposal 2 “at replanting, all forests are reassessed for wilding risk **and all other afforestation requirements**” (our highlighting). A written question was forwarded to MPI asking for clarification of this statement but at the time of filing this submission no answer had been received. The proposal again appears to cut across existing use rights and FOA strongly objects to slipping such assessments into the regulations concerning wilding spread.

QD4: Do you agree that changes to regulation 79(6) will clarify the intent and avoid confusion over property access rights? Y/N.

Yes. The change is logical and corrects an anomaly in the regulations as originally drafted.

Slash Management

QD5: Do you agree with each of the proposed amendments to the NES-PF in relation to slash regulations, set out in Table 4? Y/N If not, please identify any you disagree with by referencing the number in the left-hand column of Table 4 and explain why you disagree.

The following table summarises FOA’s comments to the proposals in Table 4:

Issue	Proposed change	FOA submission
D1a	Change to regulation 66 to mention slash	The proposed change is inconsequential. Regulation 66 sets out process and does not mention any specific environmental risk that must be covered in the harvest plan. This is laid out in Schedule 3 which clearly deals with slash management. To our thinking the current layout is logical.
D1b	Amendment to regulation 69(1) to refer to slash from processing.	The change clarifies the original intent of the regulation and is supported.

Issue	Proposed change	FOA submission
D1c	Amendment to regulation 69(2) regarding slash piles.	The change is supported.
D1d	Amendment to schedule 3(5)(c) to clarify slash management requirements	The proposed change doesn't materially alter the meaning given that clause 3(3) identifies <u>any</u> features that must be protected, and clause 5(c) details the broader considerations for slash management, however the change is not opposed.
D1e	Amendments to regulation 66 and 69 to clarify that slash on the cutover must be managed to ensure it is not mobilized in heavy rainfall (5% AEP or greater) and to avoid slope instability.	<p>While FOA understands the intent of the change and all care should be taken to avoid slash mobilizing in storm events, the reality is that the proposal as worded could not practically be met by any landowner in erodible geology. As evidenced in numerous extreme rain events, heavy rainfall in erodible geology will cause erosion and movement of the material that is sitting on the eroded land. This cannot be controlled on farms, the state highway network, within urban areas, and even fully protected native vegetation in the Department of Conservation Estate. Regulating that forest owners alone must be able to prevent erosion and avoid debris movement in all weather events is unachievable and unreasonable.</p> <p>The proposal is also completely at odds with proposed regulation to exclude forestry afforestation from lower LUC land, potentially placing forest owners in the position that they can only afforest erosion prone land but then must prevent erosion. The only way erosion can practically be avoided in all weather events is to restrict forestry to land with minimal erosion risk (Class 5 and below).</p> <p>FOA requests that MPI seek advice from erosion specialists at Landcare Research and work with the Forest Industry to ensure that any wording changes to these regulations reflects the practical reality of operating in erosion prone landscapes.</p>

QD6: What information about slash risk and slash management do you or your organization require? What is the best way for you to receive this information?

Most larger forestry companies have in place guidance for the management of slash and their operations, and experience with dealing with slash to minimize the risk of non-compliance. That said the issue is clearly emotional and difficult for all involved after severe events. After major storm damage events, the reaction in some Councils has been to seek prosecutions of forestry companies, regardless of the level of erosion and movement of all manner of debris and storm detritus from

surrounding land uses. FOA has developed forest practice guides for slash management, but ongoing refinement of such guidance will be required as knowledge and experience grow. Any regulation should reference such guidance as models for best practice, taking into account what can be practically removed in different situations.

QD7: What tools or information do you use to assess operational requirements for the 5 per cent annual exceedance probability (AEP) requirement?

The reality is that there are no tools available and foresters simply have to use their best judgement on the ground and remove slash from areas that are in an obvious flood plain. If there were tools to assist, that would be useful, but we are not aware of any currently available.

Initial Alignment with the NES Freshwater

QD8: Do you agree with each of the proposed changes to align the NES PF with the NES Freshwater, set out in Table 5? Y/N If not, please identify any you disagree with by referencing the number in the left-hand column of Table 5 and explain why you disagree.

FOA comments on the items in Table 5 are below.

Issue	Proposed change	FOA submission
D2a	Amendment to reg 40(1) to exempt river crossings where regional council has determined fish passage must be restricted.	Support change.
D2b	Requirement to install culverts 25% below the bed level.	The requirement to install a culvert 20% below the bed level is already impractical to achieve in some topography and geology (rock). The regulation needs review to ensure the requirements reflect what can practically be achieved in typical forestry situations in upper catchments and allow for practical alternatives for maintaining fish passage.
D3a	Amend definition of sediment control measures.	Support change to broaden the definition of sediment control measure but note that some refinement is required to be practically achievable. In the natural environment no landcover or sediment control measure will completely ‘stop’ sediment loss or ‘avoid’ contamination of storm flows with sediment. I.e Clause (a) should be reworded to ‘reduce sediment being washed away from its source’. Clause (b) should be reworded ‘slow or stop water with sediment in it so that the coarse fraction of sediment drops out of suspension before the water reaches a water body. Clause (c) similarly should be reworded to ‘divert flow of water from areas of fill and earthworks’ or

		something similar to better articulate the intent. In storm events it is impossible to divert all flows such that there is no contamination with sediment. Native forest could not meet these requirements.
D4a	Amendments to rules for vehicle use in and around wetlands.	<p>Support changes in principle. The following changes are not supported:</p> <p>Clause (a) requiring all machines to be cleaned before they enter any natural wetland. Given the very broad definition of wetland in the NES-F to apply to a wet area of any size, this could apply to numerous wet areas in forests. The machine cleaning requirement should apply only once when the machine is first brought into the forest. There is no logic to requiring the machine to be recleaned each time.</p> <p>Clause (c) should be amended to 'if machinery or vehicles enter any natural wetland, they must be modified or supported to <i>minimize damage</i> to the wetland.</p> <p>In reality it is not possible to 'prevent' damage.</p>

QD9: Do you anticipate any unintended consequences from this proposal to align parts of the NES-PF with the NES Freshwater.

The only unintended consequence relates to D2b. A requirement to set culverts down 25% in some topography and geology (rock) will require significant disturbance to achieve. In some situations alternative methods to achieve fish passage through culverts would be less destructive and just as effective, particularly given that, in many instances, forestry is operating in the upper catchment, upstream of numerous natural and man-made fish passage barriers, such that only good climbing species are present, if fish are present at all.

Operational and technical issues

QD10: Do you agree with each of the proposed changes to the NES-PF to address operational and technical issues, set out in Table 6? Y/N If not, please identify any you disagree with by number in the left-hand column of Table 6 and explain why you disagree.

FOA comments on the items in Table 6 are detailed below.

Issue	Proposed change	FOA submission
D5a	Amendment to definition of ford	Support as long as there is a cross reference to the Regulation 97 (6) to allow the use of natural fords.
D5b	Amendments to clarify fording requirements	<p>Any amendments to clarify the intent of Regulation 97 is supported. Currently the regulation is convoluted and confusing. With regard to Regulation 97(6), it would be better worded in the positive, to avoid the double negative which is unclear. I.e. that disturbance of the bed or vegetation in the bed of a perennial river is permitted (a) for vehicles using a ford to cross the wetted river bed up to the rate of 20 axle movements per day.</p> <p>FOA is of the view that all of Regulation 97 could be more clearly worded.</p>
D5c	Amendment to remove the exclusion of fords from the definition of existing river crossing.	Support as long as there is a cross reference to Regulation 97 (6) to enable the use of natural fords.
D5d	Amend the provisions relating to temporary structures to allow for structures to be in place up to 2 years	The change is supported. This should also include provisions for temporary bridges which should be encouraged. FOA would appreciate the opportunity to provide input to proposed regulations as indicated in the discussion document.
D5e	Inclusion of dual culverts	FOA supports the inclusion of provision of regulations for dual culverts. The conditions for dual culverts would logically be somewhat similar to single culverts. FOA would appreciate the opportunity to provide input to proposed regulations as indicated in the discussion document.

D5f	Amending the flood flow estimation regulation (45) to allow use only of the NIWA flood frequency	<p>FOA supports in part the proposed changes. FOA supports updating the reference to Henderson Collins 2018, as this describes the latest updates to the NIWA Regional Flood Estimation Tool available on the website. However, the actual reference should be to the tool (available on the website), as the papers themselves do not provide a method that can be used.</p> <p>The reference should be:</p> <p>The NIWA Regional Flood Estimation Tool (Henderson Collins 2018 version), available via the NIWA website 'Flood Frequency Tool' https://niwa.co.nz/natural-hazards/hazards/floods</p> <p>The following references represent earlier work on the same NIWA regional model that has been superseded by Henderson Collins 2018, and therefore should be deleted from Schedule 2:</p> <p>3 Pearson and Mckerchar, Flood Estimation - A Revised Design Procedure, Transactions, Vol 16, No2/CE, November 1989</p> <p>5 "Comparison of a regional method for estimating design floods with two rainfall-based methods". Mckerchar, A. I. and Macky, G. H. 2001. <i>Journal of Hydrology</i> (NZ) 40(2): 129–138</p> <p>The NIWA Regional Flood Estimation Tool is more suited to estimating flood flows in rivers draining larger catchments and can underestimate flows in smaller catchments. For this reason, it is essential to retain options for alternative empirical methods for comparison. The New Zealand Forest Road Engineering manual recommends:</p> <ul style="list-style-type: none"> • The Rational Method • TM61 <p>The Rational Method was for some reason left out of the current version of the NES-PF. Both should be included in Appendix 2.</p>
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D5g	Amend regulations 31(4)(b) to include 375mm internal diameter and 400mm outside diameter culverts	The proposed solution does not match the problem described. FOA does not support changing the regulation to include specifications based on outside diameter as this is not a standard way of specifying culverts and will make the wording of the regulation more convoluted. The issue of difficulty accessing a culverts with a 325mm internal diameter is very easily resolved by simply purchasing the next available size up.
D6a	Amend regs relating to outstanding freshwater bodies to ensure they give effect to settlement legislation rights over outstanding water bodies	Support
D7a	Changes to notice periods	<p>The notification process has become considerably more bureaucratic and time consuming than ever intended. When the NES-PF regulations were developed, it was mooted to include notification provisions to simply let councils know an activity was taking place. This has morphed into a complex process in some regions, almost a pseudo consenting process, bogging council and forestry staff down in bureaucracy and delaying operations. This was never the intent.</p> <p>FOA supports the changes as proposed with the exception of activities beside Significant Natural Areas(SNAs). Activities are routinely carried out beside SNAs all rural land uses (forestry and farming). Notice should be limited to activities that impact within the SNA itself, not just adjacent.</p> <p>FOA requests that Regulation 38 also be considered as part of the review. In first rotation forests with new road construction taking place, a requirement to provide notice of every stream crossing within 20 and 60 days of installation is also impractical. The forest owner should simply be able to provide notice that stream crossing installation is taking place as part of the general harvesting notice with a general indication of timing and location, rather than having to provide notice of each crossing individually in a piece meal way.</p>

D7b	Amending the notice period for emergency earthworks	<p>The proposed changes are supported.</p> <p>The regulation should also waive the requirement to give notice where the earthworks are for the purposes of storm damage remedial works (such as clearing slips) in forests with no current operations and therefore not covered by a notice. In some instances, urgent work will be required to avoid further damage to roading infrastructure or the environment and it is nonsensical for this to be delayed by a notice period. The same related issue relates to use of quarries to support such work.</p>
D7c	Allowance for joint notifications of multiple activities.	Supported.
D7d	Regulation 64(2) relating to ongoing harvesting operations in larger forests.	<p>The purpose of notices was simply to alert to the council where operations are taking place. It was never intended to be harvest area by harvest area and this should be clarified. There is absolutely no benefit whatsoever to the council requiring this level of notice, particularly given they can request all of the harvest plans that they wish to see.</p> <p>Where there are ongoing operations, FOA also questions the need for annual notices, given that both Councils and forestry companies are complaining that the process has become time consuming. Where operations are taking place in a larger forest with ongoing operations, a single notice at commencement should suffice, notifying the council how long operations are planned to take place. A repeat notice should only be required if the time frame of operations changes from that proposed. This would be far simpler and more efficient for both councils and foresters.</p>
D8a	Remove the traffic provision from quarries.	Support this change. The provision has resulted in the need for consents for no reason other than vehicles travelling on a public road, which is nonsensical.

D9a	Amendments to SNA provisions	<p>FOA support the proposal to amend Regulation 6(2)(b) to only apply to SNAs outside of the productive area.</p> <p>FOA also supports the need to undertake consequential amendments to numerous other provisions of the NES-PF relating to SNA's, to align with the National Policy Statement for Indigenous Biodiversity (NPS-IB) once finalised. This will be critical to ensuring the two instruments interface correctly. Transition arrangements may be required in the interim to avoid routine forestry operations requiring resource consents due to the misalignment of the national instruments.</p>
D9b	Amendment to definition of indigenous vegetation to align with NPS-IB.	Support. As noted in the final part of the submission, the definition of SNA also needs to be amended to align with the NPS IB (once finalized and gazetted).
D9c	Amendment to indigenous vegetation clearance to delete subclause (b).	Refer to Question QD17.
D9d	Definition of incidental damage.	Refer to Question QD18.
D10a	Inclusion of a process to waive the need for a consent where land has been remapped by a suitably qualified mapper, to confirm the land in question fits in a different ESC zone.	<p>FOA supports this amendment. Some councils are already following this approach, while others are requiring resource consent based on the original ESC mapping, even when it is absolutely clear the zoning is incorrect. Errors in the ESC classification are relatively common at the localized level, simply due to the scale of mapping (incorrect boundary locations) or in some instances composite units including low and high-risk units. Often the errors are easily identified on the ground, particularly with LiDAR mapping. The requirement to have a suitably qualified mapper to undertake the assessment provides a level of assurance and the system simply provides a pragmatic solution to ensure the correct rules apply without the significant cost and delay associated with remapping LUC units and consequently updating the ESC.</p>

D11a	Amending the regulation to clarify that regulation 97(1) applies to permitted activity regulations for each activity and provide guidance.	This has been an issue in some councils, and conversely if the council does not specifically consent the discharge associated with an activity, some council compliance staff have interpreted this to mean that no discharge has been authorized, which is also a problem. A clearer solution would be to include the associated discharge within the description of the activity, for each activity that is regulated.
D11b	Amend the regulations relating to sediment discharge to ensure the intent is clear.	FOA supports this amendment. This has been an ongoing source of debate with a small number of compliance staff and contractors, who take the view that the meaning is that there must be zero discharge of sediment, which is clearly not practically achievable for any land use.
D12a	Clarification of the exemption for slash removal where it would be unsafe.	Under the Health and Safety at Work Act (HSWA) it is absolutely critical that forestry managers retain the discretion to not undertake activities that will put workers at unacceptable risk. To do so would be a prosecutable offence under the HSWA. Assessment of this provision inevitably requires some level of judgement. That said, in many instances relating to slash removal, it is relatively clear cut in the real world whether slash can be removed safely or not. The discussions and debates have generally been around hypothetical situations, where council staff have been concerned that the provision could be seen as an 'out' to avoid removing slash without justification.
D13a	Clarify the regulation that there is no ability to charge for receiving notifications.	The current regulation is relatively clear that this is not provided for, however FOA is aware there has been some debates with council staff about this. Making this explicitly clear and aligned with the NES-F is supported.

QD11: Temporary structures for river crossings (row D5d of Table 6): Do you agree that this type of river crossing should be permitted under certain conditions? Y/N What conditions should be applied to the crossing as a permitted activity?

Yes. Appropriate conditions would relate to disturbance of the stream bed and control of sediment.

QD12 Dual culverts (row D5e of Table 6): Is there a need to include double culverts in the regulations? Y/N If so, what permitted activity conditions should apply to these river crossings?

Yes. Permitted Activity conditions should be similar to those for a single barrel culvert, or potentially the regulations for single barrel culverts could be amended to include dual culverts.

QD13: Culvert diameters (row D5e of Table 6): Is a 325mm minimum internal diameter specification for stormwater culverts for forestry roads or forestry tracks in green, yellow and orange zones with a slope of less than 25 degrees an appropriate minimum? (Think about the availability of culverts of this size and the products you commonly use or require). Y/N if not, explain why.

The minimum 325mm culvert was initially established for practical reasons, being a culvert size that can be easily cleared using a spade. FOA is aware that some of our members struggle to source culverts of this size, but the solution to that is simply to purchase the next culvert size up. FOA does not believe this is an issue warranting changes to the regulation.

QD14: Notice periods (row D7a of Table 6): Do you agree that notice periods could be reduced or waived for earthworks, quarrying and harvesting in green and yellow zones? Y/N Please explain your answer with evidence to support your position. If you think notice periods could be reduced what would you suggest is an appropriate notice period.

Yes. Most councils have a triaging process for notices, which in almost all instances means that they focus monitoring effort only on higher risk operations in orange and red zones. That then brings into question the value of having to notify the lower risk operations. If there is none, it should be waived.

FOA does not support having slightly different notice periods for different zones as it is just adding more complexity to a simple provision that has already become more complex (in practice) than ever intended.

Q15: Notice periods (D7d of Table 6): Where you have experience of annual notice periods (either positive or negative) please provide your views on whether annual notifications are working well or whether changes to the regulation are required. If you consider changes are required, please indicate what environmental risks will be better managed through change.

All of the larger FOA members are being required to undertake annual notices for larger forests operating under the NES-PF. In practice there is no benefit from the repeated notice process each year, particularly for very large forests such as Kinleith and Kaingaroa where harvesting has been ongoing for decades and never ceases. The Council is well aware this is the case and re-notifying every year is just creating administrative work for both the forest owner and the council, with no benefit.

In the view of the FOA a notice of commencement should only be required at first commencement of harvest in a forest, with an indication of the proposed time frame of the activity. Repeat notice should only be required if the time frame materially changes or if work ceases for a material period of time. The only relevant ongoing requirement is the ability for the council to continue to seek harvest plans, should they wish to see them.

A similar issue arises with the notice periods for quarrying, where existing quarries are located within plantation forests and used varyingly depending on where activity is taking place and the timing of construction work. Requiring notice within 20-60 days of use is impractical could potentially result in a plethora of repeat notices if quarry use is sporadic. Forest owners should be able to provide notice of all quarries that are in use or could be in use over a period of time, without the need for ongoing notifications each time they recommence operations in a particular quarry.

QD16: Indigenous vegetation (row D9b of Table 6): If the definition of indigenous vegetation is changed to that used in the NPS for Indigenous Vegetation do you foresee any practical or operation issues for plantation forestry and enforcement of the regulations? Y/N Why?

No. Indigenous vegetation in plantation forest is typically natural regeneration and as a result will be native to the ecological district. The change will have no material impact to the regulation.

QD17: Vegetation clearance (row D9c of Table 6): Do you think there will be any negative consequences of amending the definition of vegetation clearance in the NES-PF to clarify that part (b) of the definition does not authorize any vegetation clearance but that a forest crop should generally be harvestable within the constraints of the regulations? Y/N Please provide evidence to support your views.

No. The intention of clause (b) was presumably to clarify that harvesting of the production trees and associated understory damage within the productive area, is not considered 'vegetation clearance' under the NES-PF. However, given that the only vegetation clearance regulations in the NES-PF relate to protecting indigenous vegetation remnants, and the rule specifically excludes understory vegetation, in hindsight clause (b) is redundant.

QD18: Incidental damage (row D9d of Table 6): Please provide any evidence you have that the definition of incidental damage is causing issues for users and the nature of those issues. Do you have suggestion for how the definition could be less subjective while still achieving the intent of allowing minor damage to indigenous vegetation under limited circumstances?

FOA is not aware that interpretation of Regulation 93(5) is causing any significant issues for users. Inevitably some judgement is required to assess this prior to harvest, as is the case for many of the regulations. At the end of the day forest managers bear the risk, as if the end result clearly does not meet the requirements (vegetation damaged beyond a level that will rapidly recover) they will run the risk of enforcement action. This places the onus on the party undertaking the harvesting to limit the damage as far as is practical and stay within the regulations.

QD19: Health and safety (row D12a of Table 6): What additional information or resources could help foresters and councils make decisions that balance environmental outcomes with worker safety when managing slash?

Question D19 referring to balancing environmental outcomes with worker safety, implies that one can be traded off for the other. The bottom line is that the HSWA requires PCBU's to protect their workers from harm by eliminating or minimising risks arising from work. In some topography the risks will be such that it is not practical to safely remove slash. It is essential that when managing slash (and all aspects of forestry operations) forest managers and workers retain the discretion to make an assessment of the risks involved and make the call that a situation involves unacceptable risk of harm and cannot proceed. It will then be a matter of assessing other alternatives to remove or contain slash. This requires professional, site specific judgement based on the topography and layout of the particular area. It seems unrealistic that some generic guidance resources would materially assist with decision making.

Additional matters requiring clarification

FOA requests that the following additional list of matters be considered as part of the review. All are relatively minor matters arising from somewhat unclear provisions, that are causing issues with interpretation by Councils:

Regulation	Issue	Proposed change
31(4)	As currently worded any existing under road culverts that are smaller than the regulations are non-compliant, despite being compliant at the time the roads were constructed. This could require that a large number of under-road culverts be removed and replaced.	Amend the regulation to apply only to newly installed culverts and authorize existing culverts that pre-date the NES-PF as for instream culverts.
93	The interface between Regulation 93 and District Plan rules is currently unclear, where rules exist in the District Plan which potentially could over-ride the NES-PF under regulation 6. It is often not clear which rules prevail.	Clarify the interface with District Plan rules, where both the NES-PF and District Plan contain similar but different rules.
38 (1)	Clarify that notification of temporary crossings is not required. 38(1)(a) excludes temporary crossings but 38(1)(b) refers to all crossings.	For clarity exempt temporary crossings in reg 38(1)(b) also.

Alignment with the NES Freshwater

As noted above, FOA supports alignment of the NES-PF with the NES_F. Once that is completed. Once aligned, we submit that there is a very sound good case for MfE and MPI to reduce the scope of NES-PF Regulation 6 (Plan Rule Stringency) so that Councils do not have the discretion to make more stringent rules for plantation forests to give effect to the National Policy Statement for Freshwater Management (NPS-FM), because the objectives within the NPS-FM will be adequately addressed after this review.

That alignment would be in keeping with the Minister’s stated intent of the RMA reforms including better national direction.

Alignment with the NPS Indigenous Biodiversity

As has been raised numerous times by FOA it is absolutely essential that if the NPS-IB is gazetted as currently proposed then the NES-PF must be simultaneously revised to ensure the two align.

Two key changes are required.

1. The definition of SNAs in the NES-PF needs to align with the definition as set out in the NPS-IB once gazetted.

If when the NPS-IB is gazetted, and the criteria for a SNA is included in Council plans without the usual plan change process there will be unintended adverse impacts on plantation forestry operations, that areas could be included without the assessment and mapping process specified by the NPS-IB. This is due to the misaligned definition in the NES-PF which includes the wording:

SNA (a) “...however described” and

(b) “...or by way of significant criteria”

Of particular concern are the criteria relating to mobile fauna that utilise plantation forest areas.

The SNA definition within the NES PF means that areas that potentially meet the SNA criteria in the NPS-IB could potentially apply immediately, prior to any assessment or mapping. This in turn would affect the activity status for numerous activities that require the activity does not occur within an SNA.

FOA requests that when the NPS IB is gazetted, the NES-PF definition of SNA should be amended to adopt the NPS IB definition.

2. Amendment of references to SNA in the NES PF to refer to indigenous vegetation remnants only

The NPS-IB contains clear provisions for plantation forestry to be identified and mapped as SNA, whereas the NPS-PF provisions were written on the assumption (based on practice to date) that the term SNA would only apply to protected indigenous forest remnants. Numerous activity provisions specify that the activity must not occur within an SNA and requirements such as clearing wildings from SNA's which become non-sensical if the actual production forest is the SNA. If the current approach of the NPS-IB is retained then it is imperative that each reference to SNA is amended to make it clear that they only apply to SNAs that are protected indigenous vegetation remnants, not the production forest itself.

Conclusion

FOA does not support the inclusion of rules for permanent forestry with the NES-PF. This is clearly a change in scope beyond what the NES-PF was developed to manage. The environmental, social, culture and economic effects of plantation and permanent forests are clearly very different. If rules are developed for permanent forests they should therefore be clearly separated, to ensure the rules are fit for purpose. Combining the two will result in results that are not designed for either.

FOA is strongly opposed to regulations to control plantation forest afforestation on broad and subjective grounds. If additional regulations are introduced for permanent or plantation forest afforestation then it will be critical that they are underpinned by clear policies and objectives to guide decision making, to avoid complex and costly consenting processes. It is imperative that any proposed regulation appropriately considers the risk of perverse outcomes of significantly deterring afforestation and thereby jeopardising New Zealand meeting its climate change commitments along with our aspirations for water quality and biodiversity. It is also important that a robust CBA is undertaken, as the costs of deterring afforestation are potentially significant.

FOA supports the intent of requiring forest management plans for permanent forests under the NES-PF but questions whether then RMA is the correct vehicle to achieve this. The NES-PF does not regulate the growing of trees and it is very unclear what adverse effect under RMA would require such a regulation. FOA has grave doubts about District Council's capacity to monitor and enforce such plans, particularly in the long term. A better vehicle would be to incorporate management plans into ETS approvals, with penalties applied if management plans are not complied with.

FOA does not support the discussion papers proposal for the inclusion of Wildfire Risk Management Plans under the NES-PF. FOA considers that the proposal does not provide sufficient justification or evidence to support what is being proposed, nor does it provide any indication on how the proposed approach will meaningfully achieve or contribute to outcomes being sought, now how what is being proposed will be measured. At best it appears to be regulating awareness raising. NZFOA does not believe this is the appropriate mechanism through which to deliver wildfire risk management or awareness, nor will the proposals meaningfully contribute to a reduction in the consequences of

wildfires, including the environmental consequences of wildfires across the landscape. Wildfire risk management should be addressed at the landscape level by FENZ, the agency with the statutory responsibility for fire risk management, including the environmental consequences. Wildfire risk management is best addressed through the structures and strategies that FENZ has and will be implementing which will address wildfire risks local at landscape level.

FOA supports the intent and outcomes of raising awareness of wildfire risks and promoting measures that can be considered and undertaken to mitigate wildfire risks. The FOA/FFA Joint Fire Committee is planning to review and update the 2018 Forest Fire Risk Management Guidelines in 2023 and would welcome the opportunity to work with FENZ and Te Uru Rakau to update these and use these as a channel and or platform through which to promote and raise awareness of fire risk management considerations to forest owners, managers and landowners and include guidance and templates to enable them to proactively be able to do so.

FOA does not support the proposals to regulate wilding risk on replant. The cutting across existing use rights cannot be supported. The proposed six-month time frame is just not reasonable when forestry has a small window in which to replant and could miss a whole year in which to replant areas harvested in the summer period.

FOA largely supports the amendments proposed to the NES-PF to improve clarity and workability, other than some minor changes to wording as detailed in our submissions to improve workability and clarity of the provisions and to ensure they are practically achievable.

Thank you for the opportunity to submit on this important issue.



David Rhodes
CEO, FOA

Appendix:

G Chappell legal opinion

Attention: Sally Strang
Chair - Environment Committee
New Zealand Forest Owners Association

By Email: sstrang@hnrng.com
cc. rachel.millar@nzfoa.org.nz

14 November 2022

REVIEW OF THE NES PLANTATION FORESTRY DISCUSSION PAPER – EXISTING USE RIGHTS FOR REPLANTING

1. INTRODUCTION AND OVERVIEW

- 1.1 You have asked for an opinion as to whether a proposal to amend the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (“NES-PF”) to require a wilding conifer risk assessment prior to replanting (“the Proposal”) is consistent with the provisions of the Resource Management Act 1991 (“RMA”) that protect existing use rights.
- 1.2 If implemented, the Proposal will potentially impact all replanted forests by:
- (a) Requiring a new wilding risk assessment; and
 - (b) Changing the activity status for the replanting of forests from permitted to restricted discretionary contingent on the findings of the wilding risk assessment.¹
- 1.3 This opinion outlines the Proposal, addresses the relevant legislation and case law and assesses the Proposal against the relevant provisions. It also comments on the forthcoming process for implementation of the Proposal and the shortfalls of the interim evaluation.
- 1.4 It is presumed that most forests are replanting, subject to the provisions of the NES-PF, by complying with the permitted activity standards.

¹ Regulation 81

Executive summary

- 1.5 Amending regulation 79 of the NES-PF to require a wilding tree risk assessment calculation at the time of replanting a forest generally disregards a forest owner's existing use rights and the scheme of the RMA to protect property rights in relation to land.
- 1.6 This conclusion is subject to the proviso that a tree risk assessment to control wildings in wetlands on the forest owner's land may not attract existing use rights. It is noted that, as the functions of regional councils in relation to significant natural areas ("SNAs") and wetlands are not managed under the same subsection of the Act (s30(1)(c)), this leaves open the question as to whether SNA's are, like wetlands, not subject to existing use rights. In my view, arguably replanting that affects wildings in an SNA attracts existing use rights as compared to wetlands, which do not.
- 1.7 As the evaluation of the Proposal under the Interim RIS, generally disregards a forest owner's existing use rights it has failed to take into account a number of relevant considerations including the costs of obtaining a risk assessment and resource consents if the threshold risk is exceeded, or the cost for forest owners to assert their existing use rights. As a result, the Proposal is not likely to be efficient, effective or the most appropriate way to achieve the purpose of the Act.

2. THE PROPOSAL

- 2.1 The National Direction for Plantation and Exotic Carbon Afforestation MP Discussion Paper (No 2022 /10) ("Discussion Paper") proposes, among other things, to require all forests to assess wilding tree risk at replanting, instead of only at the point of afforestation or where there is a change of effect between afforestation and replanting.² Replanting that has a tree risk calculator score of 12 or more will be a restricted discretionary activity, even if there is no change in the scale and intensity of the planting.³
- 2.2 The Discussion Paper states that:

"Under this proposal, the replant regulations will be amended to ensure changes in wilding risk over time are managed through a reassessment before replanting. At present no reassessment is required because when the rules were developed, foresters were held to have existing use rights as long as the activity was of the same scale and intensity."⁴

"Changes in the use of surrounding land is a significant contributor to changes in the associated wilding risk of a plantation forest, or indeed of a shelter belt of exotic species. Such changes are unpredictable and are not within the control of a plantation forest owner. In New Zealand, land use changes are relatively common. When there is a decrease in

² Refer paras 3.2 and 3.3 below

³ This is the same permitted activity standard as applies to afforestation under regs 11 and 16.

⁴ Page 46 Discussion Paper

grazing pressure, or fire, there is a higher risk of seed from adjacent plantation forests establishing.”⁵

- 2.3 The effect that the Proposal seeks to control is wilding risk arising from changes to adjacent land use. “This means policy settings need to allow for changing circumstances”.⁶ The “changing circumstances” in question are not caused by the plantation forest owner.
- 2.4 The purpose of the wilding tree assessment is noted as providing “the evidence of wilding risk for an afforestation proposal. It provides a point in time assessment, based on the species being planted and how likely seed will spread and establish in the surrounding land”.⁷
- 2.5 The Discussion Paper appears to have been prepared as part of the consultative process described under s46A(3) and (4) pursuant to s44 of the Act and states that “feedback on the options and proposals will inform ... decisions on which of these to progress, how to development them further, and how we might interpret them.”⁸ Options for the Proposal are listed as amending the NES-PF. This contrasts with other proposals in the Discussion Paper which refer also to developing a new NES-PF or implementing the proposals under the proposed new resource management framework.⁹
- 2.6 The Discussion Paper is accompanied by an Interim Regulatory Impact Statement (“Interim RIS”) which evaluates the proposals in the Discussion Paper. The Interim RIS is noted as providing an indicative cost-benefit analysis, “with a full analysis to be published alongside the Section 32 Evaluation Report as required by s44 (1)(b) of the RMA”.¹⁰

3. RELEVANT LEGISLATION AND CASE LAW

Existing NES-PF provisions

- 3.1 Under the NES-PF “replanting” means the planting and growing of plantation forestry trees on land less than 5 years after plantation forestry harvesting has occurred.
- 3.2 To manage wilding tree risk, reg 79 of the NES-PF sets permitted activity standards for replanting. There are two parts to this clause. The first requires, six months before replanting, the completion of a wilding tree risk calculator¹¹ score for any land on which replanting of a conifer species will occur, if that conifer species is different from the trees most recently harvested on the land. Replanting is a restricted discretionary activity if there

⁵ Page 45 Discussion Paper

⁶ Page 45 Discussion Paper

⁷ Page 46 Discussion Paper

⁸ Page 6 Discussion Paper

⁹ Page 10 Discussion Paper

¹⁰ Page 50 Interim RIS

¹¹ By a suitably qualified person

is a risk assessment score of more than 12, provided this is higher than any previous score. As noted in the Proposal, reg 79 presently applies only to replanting with a different species because when the rules “were developed foresters were held to have existing use rights as long as the activity was of the same scale and intensity”.¹²

- 3.3 The second part of reg 79 is clause 6, which applies to all replanted forests. This requires, before replanting begins, the eradication of wilding conifers from wetlands and SNAs that have resulted from the previous harvest. It requires continued eradication every five years after replanting, within wetlands and SNAs.
- 3.4 Regulation 79 is listed as relating to territorial and regional council functions.¹³
- 3.5 Under reg 77, replanting is a permitted activity for both regional councils and territorial authorities provided that reg 79 is complied with. If it is not complied with, replanting is a restricted discretionary activity.¹⁴

RMA provisions

Section 9 – Use of Land

- 3.6 Section 9 provides that no person may use land in a manner that contravenes a national environmental standard unless the use is (inter alia) allowed by section 10 or is an activity allowed by section 20A.
- 3.7 In declaration proceedings determined two years prior to the gazettal of the NES-PF, the Environment Court held that the spread of wilding pines is a use of land under s9 of the Act.¹⁵ The Court noted that:

[32] Taking all these considerations into account, I hold that the growing of self-sown trees comes within section 9(3) of the RMA as a way of using land, regardless of the use of the land.

...

[36] To see why, recall that the scheme of the RMA is to maintain property rights in land. An owner or occupier may generally use their land as they wish³⁵ unless they are restricted by rules in district or regional plans³⁶.

¹² Discussion Paper at p46

¹³ Regulation 76

¹⁴ Regulation 81

¹⁵ *Re Mackenzie Branch of Federated Farmers of Zealand (Inc)*, [2015] NZEnvC 56, [2015] NZRMA 171, 2015 WL 1621431

Sections 10 and 20A - “Certain existing uses in relation to land protected” and “Certain existing lawful activities allowed”

3.8 Section 10 provides:

(1) Land may be used in a manner that contravenes a rule in a district plan or proposed district plan if—

(a) Either—

(i) The use was lawfully established before the rule became operative or the proposed plan was notified; and

(ii) The effects of the use are the same or similar in character, intensity, and scale to those which existed before the rule became operative or the proposed plan was notified:

...

(4) For the avoidance of doubt, this section does not apply to any use of land that is—

(a) Controlled under section 30(1)(c) (regional control of certain land uses); or

(b) Restricted under section 12 (coastal marine area); or

(c) Restricted under section 13 (certain river and lake bed controls).

3.9 Section 20A is similar to s10 but relates to rules in regional plans. It provides that an existing activity that meets the character, scale and intensity criteria may continue as a permitted activity – though only for six months after a new regional rule becomes operative.

3.10 The onus of proof to establish an existing use falls on the party asserting its existence:¹⁶

3.11 In *Aokautere Land Co Ltd v Palmerston North CC*¹⁷, the Environment Court emphasised that the test under s10(1)(a)(ii) is directed at (*inter alia*):

The effects of the activity itself rather than their impact on the off-site receiving environment (as otherwise existing use rights would be lost as a result of changes to the off-site receiving environment).

3.12 In *Mawhinney v Auckland Council*, the Environment Court concluded that an existing use of forestry includes the whole cycle from preparation, planting, and harvesting to replanting¹⁸ and that activities that are less intense or smaller in scale do not disqualify an activity from being an existing use.¹⁹

¹⁶ *Waitakere Forestry Park Ltd v Waitakere CC* A077/94(PT).

¹⁷ [2014] NZEnvC 75

¹⁸ *Mawhinney v Auckland Council* [2018] NZEnvC 15 at [80]

¹⁹ *Ibid* at [75]

- 3.13 The High Court has held that the RMA, and in particular, ss 9, 10, 10A and 20 constitute a comprehensive code on the issue of existing use rights.²⁰

Section 30 – Regional Council Functions

- 3.14 Section 30 sets out the functions of a regional council. A Regional Council's functions that relate to wilding control are commonly understood as the management of wildings in water bodies (i.e. typically wetlands) and in SNAs.

- 3.15 These functions are derived from the following provisions:

- (a) Section 30(1)(c) which authorises the control of the use of land for the purpose of “(ii) the maintenance and enhancement of ecosystems in water bodies and coastal water”. This relates to wetlands.
- (b) Section 30(1)(ga) which refers to the establishment, implementation and review of objectives, policies and methods for maintaining indigenous biological diversity. This relates to SNAs.
- (c) Section 30(h) which refers to “any other functions specified in this Act”. This could relate to SNAs further to s6.

- 3.16 The High Court has held that it was not consistent with the purpose of the RMA amendment Act 2003 to read down s30(1)(ga) of the RMA so that it included every relevant function except controls over land use. In the context this was not what Parliament intended.²¹

Section 43B – Relationship between national environmental standards and rules or consents

- 3.17 Section 43B governs the relationship between national environmental standards and rules.
- 3.18 Section 43B(10) provides that “If a national environmental standard requires a resource consent to be obtained for an activity, sections 10, 10A, 10B, and 20A(2) apply to the activity as if the standard were a rule in a plan that had become operative.”
- 3.19 This provision, which preserves existing use rights from the implementation of national environmental standards and is consistent with the scheme of the Act, in effect modifies (for example) s10 so that it provides:

Land may be used in a manner that contravenes a national environmental standard if -
either-

- the use was lawfully established before the NES was gazetted; and

²⁰ *Springs Promotions Ltd v Springs Stadium Residents Assn Inc* [2006] 1 NZLR 846, (2005) 12 ELRNZ 130, [2006] NZRMA 101(HC),

²¹ *Property Rights in New Zealand Inc v Manawatu-Wanganui Regional Council*, [2012] NZHC 1272, 2012 WL 2148224

- the effects of the use are the same or similar in character, intensity and scale to those which existed before the NES was gazetted.

4. ANALYSIS – WHEN DO EXISTING RIGHTS APPLY TO THE REPLANTING OF LAND?

- 4.1 Caselaw has established that the spread of wilding pines is a use of land under s9.²²
- 4.2 Existing use rights are limited to a use of land that is the same in intensity, character and scale, noting that the sections of the Act managing existing use rights form a comprehensive code. Section 10(4) cautions that s10 does not extend to those uses of land controlled by the regional council under s30(1)(c). Instead, such existing activities are subject to s20A, and its six-month grace period.
- 4.3 The control of the use of land for “the maintenance and enhancement of ecosystems in water bodies and coastal water” is a function of regional councils under (s30(1)(c)(ii). Regional Councils also have functions in relation to SNAs pursuant to s30 (1)(ga) or (h) “any other functions specified in this Act” and s6.
- 4.4 Regional Councils can therefore control the use of land to manage wildings in water bodies (eg wetlands) and to manage indigenous biodiversity.²³
- 4.5 Regulation 79(6) (replanting) currently provides for the management of wildings in wetlands and SNAs by way of permitted activity standards. Ostensibly, this applies to the replanting of any existing forest, regardless of existing use rights under s10,²⁴ though there is a question as to whether this clause of reg 79 can legitimately extend to SNAs in existing forests given that the control of the use of land for purposes related to SNAs is not a function of a regional council under s30(1)(c).
- 4.6 Regulation 79, which requires a wilding tree risk calculator score to be completed for conifer species if that species is different from the trees most recently harvested is also consistent with the limits on existing use rights under the Act. This is because a change of species (and increased wilding risk) is deemed to amount to a change to the scale and intensity of the effects of the original afforestation.²⁵
- 4.7 In view of the RMA’s separation of regional council and territorial authority functions, the current NES-PF requirement for a wilding tree risk assessment can be assessed as having a dual purpose:

²² Supra note 8

²³ The control of indigenous biodiversity was held to be a relevant function of regional councils in *Property Rights in New Zealand Inc v Manawatu-Wanganui Regional Council*, (ibid note 14) . The Court also held that the function of maintaining indigenous biological diversity is broader than that of controlling the use of land, though it may include such controls, as endorsed in *Attorney-General v Trustees of the Motiti Rohe Moana Trust* [2019] NZCA 532, [2019] 3 NZLR 876.

²⁴ Any existing use rights in relation to this issue are lawfully time limited (i.e., six months after the rule becomes operative).

²⁵ The NES-PF User Guide para 5.8.6 notes that “Regulation 79 recognises it is possible that a change of conifer species ... could result in an increase in the scale and intensity of adverse effects associated with wilding conifer spread. It is therefore not appropriate to assume that existing use rights under section 10 and 20A of the RMA will also apply for replanting when this involves a different species than was last harvested.

- (a) To assess the risk of wilding conifers to establish in adjacent properties (a district council function); and
- (b) To assess the risk of wilding conifers establishing in wetlands and SNAs on a forest owner's land (a district²⁶ and regional council function).

- 4.8 Accordingly, any expansion of reg 79 to require a tree risk assessment for replanting could arguably only operate for existing forests to the extent such assessment related to the risk of wilding spread into wetland areas on that forest owner's land. This is because, as a land use, s10(4) applies unless the use of land is controlled under s30(1)(c) and SNAs are not a matter controlled by s30(1)(c).²⁷
- 4.9 The corollary is that any tree risk assessment to address the risk of wilding spread to adjacent properties (rather than wetlands) would be inconsistent with the existing use rights protections established under s10 and the scheme of the Act.
- 4.10 When the current regulations were developed, foresters were held to have existing use rights as long as the activity was of the same scale and intensity."²⁸ The key change since then apparently arises from changes in adjacent land use rather than a change to forestry activities or wetland / SNA management. As noted above²⁹, the test under s10(1)(a)(ii) is directed at the effects of the activity itself rather than their impact on the off-site receiving environment (as otherwise existing use rights would be lost as a result of changes to the off-site receiving environment).³⁰
- 4.11 It is noted that the Proposal would also be inconsistent with the further proposal in the Discussion Paper to amend reg 79(6) to restrict the requirements to remove wildings in wetlands and SNAs to those areas that are on the same property on which the afforestation activity occurs or an adjacent property under the same ownership.³¹

5. ANALYSIS OF DRAFT EVALUATION

- 5.1 The Discussion Paper proposes amendments to the NES-PF to address the Proposal. Before recommending the making of a national environmental standard, the Minister must also prepare an evaluation report under s32 of the Act.³²

²⁶ Section 31(1)(b)(iii)

²⁷ If s30(1)(c) applies, the allowance for existing lawful activities is governed by s20A.

²⁸ Page 46

²⁹ [2014] NZEnvC 75

³⁰ Refer paragraph 3.11

³¹ Noting the change would make reg 79(6) consistent with reg 11(5).

³² Section 44(1)(b). As noted above, the Interim RIS is an indicative cost benefit analysis for s32 purposes.

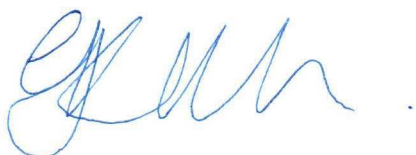
- 5.2 Pursuant to s32 any amending proposal must assess (inter alia) the efficiency and effectiveness of the provisions in achieving the Proposal's objectives. For any amending proposal that imposes a greater restriction on an activity than the existing restriction, the evaluation report must also examine whether the restriction is justified in the circumstances of each region or district. It is clear that the proposed amendment to clauses (1) to (5) of reg 79 will impose a greater restriction on the replanting of forests than the status quo. This is because (a) an additional wilding risk assessment will be required and (b) the activity status for replanting may change from permitted to restricted discretionary leaving land owners having to assert existing use rights.
- 5.3 A question relevant to this issue will be the extent to which regional councils have identified, for their region, that a wilding tree risk assessment is appropriate for the control of wildings in wetlands and SNAs for all replanted forests (i.e those which meet the existing use tests of scale and intensity) and the associated costs. A second question is the efficiency of amending the NES-PF to purport to require all replanting to be subject to a full wilding tree risk assessment process, when most forests will be able to rely on existing use rights to replant. A third issue is the associated inefficiencies of changing the activity status for replanting from permitted to restricted discretionary and the attendant costs.³³
- 5.4 In relation to the Proposal the Interim RIS:³⁴
- (a) fails to examine whether the Proposal is justified in the circumstances of each region or district;
 - (b) does not address the risk of inconsistency or tensions with existing use rights as a key risk of the approach;
 - (c) notes that the option provides authorities with effective tools, without assessing the impact of managing existing use rights or analysing the additional costs associated with requiring consents compared to replanting as a permitted activity under the status quo;
 - (d) considers that resource management efficiency and effectiveness is better than the status quo without assessing:
 - i. how this is impacted by existing use rights, including the complexities for parties in managing such rights;
 - ii. whether it is disproportionate to the scale of the issue; and

³³ This opinion does not address broader issues associated with the proposal such as the extent to which there are fewer high-risk species being planted.

³⁴ Refer table 8 – Impact Analysis – Wilding Risk and paragraph 150

- iii. whether it accounts for the costs of foresters having to assert that existing use rights apply;
 - (e) fails to align the objective of the Proposal (changes to adjacent land uses) with the outcome (ability to only clearly regulate in relation to wetlands).
 - (f) fails to take into account that the relevant starting point for legislation is that it should not have retrospective effect and should not interfere with accrued rights and duties.³⁵
- 5.5 As the objective of the Proposal is to manage the risks associated with wilding pines arising from changes to adjacent land, amendment to reg 79 is unlikely to be an efficient or effective way to meet the objective of the Proposal as, when overlaid with s10 existing use rights, it is potentially limited in its ability to address matters other than wetland management.
- 5.6 Combined, these issues substantially reduce the “overall assessment” ranking of the Proposal and impede the conclusion that the Proposal is the most appropriate way to achieve the purpose of the Act.

Yours faithfully



Gill Chappell

³⁵ Legislation and Advisory Committee Legislation Guidelines 2021, Section 12.1