

Submission

On

**Proposal to amend the Electricity
(Hazards from Trees) Regulations 2003
to address ‘out-of-zone’ tree risks.**

Submission to:

Electricity Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
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22 August 2024

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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 plantation forests and over 70% of the annual harvest.

Introductory Comments

1. The Forest Owners Association Incorporated (FOA) welcome the opportunity to provide feedback on the consultation on the Proposal to amend the Electricity (Hazards from Trees) Regulations 2003 to address 'out-of-zone' tree risks.

The Plantation Forestry Sector

2. In 2023, the forest growing sector was worth \$6.35 billion in export value, and this is expected to decrease to \$5.81 billion in 2024¹ due to a combination of reduced supply and subdued international markets which are not anticipated to rebound. The sector contributes about \$9 billion toward GDP across its wider supply chain. The Ministry for Primary Industries (MPI) expects forest product export values to exceed \$9 billion by 2030.²
3. Plantation forestry is predominantly a commodity market which means that forest owners are price takers. The profits or returns to forest owners are dependent on a variety of factors, *inter alia*, market conditions, supply and demand dynamics, supply chain costs, etc. Ultimately, the growers return is the sale price less all the costs incurred in growing and getting the products to the market. This includes insurance premiums where this is available and affordable, and associated levies.
4. Plantation forests play a significant public good role in helping New Zealand meet its net-zero emissions targets by 2050 through carbon sequestration and providing feedstocks to meet growing demand for bioenergy, and for high-value products that offer an alternative to those made from fossil fuels. This vital role is only going to increase in the future.
5. The forestry sector supports the employment of 35,000 to 40,000 people, investment, and development across New Zealand throughout its supply chain in both urban and rural New Zealand.

¹ <https://www.mpi.govt.nz/dmsdocument/60526-Situation-and-Outlook-for-Primary-Industries-SOPI-December-2023>

² <https://www.mpi.govt.nz/dmsdocument/41319-fit-for-a-better-world-background-analysis-on-export-earnings-in-the-primary-sector>

Feedback – Proposed Option

6. We welcome the recognition in the recommended option that prevention is the most cost-effective point of intervention for risk mitigation, and that the Works Owners as the primary beneficiary have been incentivised to better manage the risk to their infrastructure through both an enabling risk assessment process combination with a cost-benefit (both to the Works Owner) process. However, to ensure objectivity independent experts should undertake the assessments.
7. We also welcome Works Owners incurring the cost of such mitigations as having “skin in the game” means that the resulting priorities will be more considered, and the Works Owners will be more incentivised to explore alternative risk reduction options that achieve the same or similar outcomes, if and where these might exist or emerge in the future. However, compensation must go beyond the cost of a crop tree and include the costs to the tree/land owner such as loss of use of land, deforestation liabilities, weed management, etc.
8. We strongly support the combination of impact or consequence AND likelihood as this represents sound risk assessment process or good practice and ensures the outcome will not be biased toward the worst-case scenarios devoid of any assessment of the likelihood of this occurring.
9. We strongly recommend that the Works Owner are encouraged to invite and work collaboratively with the land or tree owners to undertake the risk assessment. This would enable or provide greater assurance to all parties that the assessment is balanced, considered the perspectives of all parties and is less likely to move to arbitration. It will also most likely enhance the risk assessment through improved situational, site specific or technical information or input. We appreciate that this will not always be achievable, however it should be encouraged to achieve the best outcomes for any situation.
10. It is uncertain how reasonable costs will be determined and any conflicts in what is considered reasonable will be assessed as this will ultimately be situation dependent. Criteria should be included.

Fire risk

11. We are somewhat perplexed by the inclusion of fire risk posed by tree species in the likelihood factors to consider. This approach as it is currently written is fundamentally flawed.
12. We assume that fire risk in this context means flammability and so it is incorrectly inferring that the fire risk is a combination of the likelihood and severity of a tree causing a fire based on the tree’s species! It is not the flammability of a tree species that causes a fire, a fire requires an ignition source which in most cases could be attributed to the powerlines. The trees falling on the lines may, *inter alia*, exacerbate this risk but the tree species is largely irrelevant, rather it is the vegetation complex (fire fuels) and its condition (i.e., dry or otherwise) that determines the likelihood of ignition and spread.
13. As the document has stated that this part of the regulations will mostly affect plantation forest owners, and that 90% of New Zealand plantation forests are *Pinus radiata*. It can only be inferred that this assumes that *P radiata* is highly flammable. The evidence, however, is that *P radiata* is only moderately flammable and that there are many other species, many of which commonly grow under powerlines that are significantly more flammable than radiata pine, including Manuka, kanuka, gorse, broom, tussock, and grass etc.

Does not burn well			Average burn				Burns well		
1	2	3	4	5	6	7	8	9	10
		Douglas fir		Radiata pine			Eucalyptus species		
		Tasmanian blackwood					Cypress species		
Kotukutuku		Kamahai	Tawa			Totara		Kanuka	
Broadleaf		Ngaio	Rimu			Tree ferns		Manuka	
								Gorse	
Lower fire risk					Higher fire risk				

Scale of flammable tree species (<https://www.canopy.govt.nz/manage-forest/practices/fire-risks/>) adapted from the Fire Management Guidelines for small forests, National Rural Fire Authority, 2010).

14. Most wildfires recorded over the last 30 years started in dry grass (81% of the 50,097 recorded fires³).
15. Our concern with the inclusion of this and references to tree species as the risk in the likelihood factors is that it does not appear to be based on evidence of facts and rather an unsubstantiated opinion on fire risk. The creation of corridors increases the regeneration of weeds such as gorse which is far more flammable than *Pinus radiata*.
16. If fire risk is to be included under likelihood, we recommend that this be a separate bullet titled “the potential for wildfire”, and that the risk assessment should include the relevant and evidence-based risk factors, such as the gradient of flammability of common species and the likelihood of fire coming from trees due to high-risk activities that occur in and around the trees in question.
17. We would also recommend that the likelihood of fire caused by power infrastructure and activities or faults also be included (including i.e. Environmental conditions, northwest with exposure, voltage and length of span (sag), maintenance regimes, auto reclosure systems.
18. We would also strongly recommend that any such assessment be based on sound fire behaviour expertise and that FENZ and the land or forest owners are involved in such assessments as they generally have the relevant risk management expertise.
19. Please refer to the following reference material to better inform this aspect of this option:
 - Forest Fire Risk Management Guidelines - which were developed to reduce the risk of wildfires in New Zealand plantation forests - <https://www.nzfoa.org.nz/resources/file-libraries-resources/fire/671-forest-fire-risk-management-guidelines-1/file>
 - Rural Fire Guidelines - <https://www.nzfoa.org.nz/resources/file-libraries-resources/fire/831-rural-fire-guidelines-managing-the-risks/file>
 - 2022 Quantifying Forest Industry Investment in Fire Risk Management – this report details the investment that the plantation forest sector makes and capability it contributes toward fore risk management in the rural landscape - <https://www.nzfoa.org.nz/resources/file-libraries-resources/fire/879-fire-investment-report/file>
20. We recommend that reference to fire risk by tree species be removed or that it be clearly stated that this must be based on fire behaviours science and evidence, which would effectively make

³ <https://www.farmersweekly.co.nz/farm-management/tinder-dry-grass-keeps-fire-risk-high/>

the inclusion of this as a risk likelihood factor compared to other vegetation types largely irrelevant.

Response to Questions

1	Do you agree with our proposed approach? If not, why not?
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21. We do not totally agree with the approach as the option of Works Owners obtaining easements has not been assessed. This option has always been available to Works Owners but there is little evidence of their uptake. We can only conclude that Work Owners do not want to properly pay for their occupation/taking of property rights of tree owner land. While the discussion document mentions compensation it is not clear who is going to be responsible for paying rent, paying rates, being liable for deforestation liabilities, paying for weed control-all obligations of an occupier of land.
22. The proposal deems right of occupation to the Works Owner but does not clarify how such deeming interacts with legislative obligations of an occupier.
23. For the interaction of lines and trees as at 1992 providing for compensation as under the Electricity Act is not appropriate. These proposals are very different to the deeming of occupation of lines existing as of 1992. Creation of corridors impose costs on the tree owner far beyond the cost of the loss of a tree. Also, it is unclear as to how replanted trees are to be considered.
24. Another issue is that some lines are secured by way of easements. Our canvassing of FOA members indicate that very few such easements other than very recent ones (Transpower lines from Whakamaru) would be wide enough to include a fall distance of adjacent trees.
25. These proposals would allow a Works Owner to extend the boundary of its easement without being subject to existing conditions of the easement.
26. Any proposal must recognise the factual difference of lines that have deemed occupation rights from 1992 and lines that are already subject to an easement and or agreement with the tree/landowner. In other words, the proposals for tree fall corridors should only apply where trees have been planted after 1992 and do not apply to lines already subject to easements and other agreements.

2	Do you agree with our assessment of the potential benefits and downsides of the risk-based notice power?
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27. No. The proposals do not show that the impact being considered is caused by plantation trees and therefore there is inadequate evidence to justify the taking of land corridors for the benefit of the works owners. We support comments made by other tree owners that question the conclusions reached of the impact of Cyclone Gabrielle. To date, while there has been evidence of tree fall affecting Transpower lines we have not seen any evidence from Works Owners as to the percentage of outages caused by plantation tree fall.
28. The downsides listed in the discussion document do not adequately capture the tree and landowner's downsides. There is no mention of the risk to all parties of the fire risk of weed infested corridors.
29. The risk of windthrow when opening up a corridor must also be taken into account.
30. The impact of badly maintained works must also be assessed.

3	How long should a tree owner have to remove a tree after receiving a treefall hazard notice?
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31. While a time frame could be set there must be discretions to allow for issues relating to safety, access that would mean that the timeframes cannot be met.

4	Are specific access arrangements required to carry out risk assessments?
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32. There should be no change to the existing arrangements, that is the need to obtain the relevant forest access permit should be applied. This highlights the problem with deemed occupation rights. The forest/land owners has statutory health and safety obligations that cannot be contracted out and also has property obligations to meet insurance requirements, to meet commercial arrangements to manage the tree crop that should not be overridden by providing extending access right to Works Owners.

5	Is a transition period required for implementation?
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33. Yes, to allow for discussions between tree crop owners and the relevant lines companies to create an agreed working arrangement for the new procedures. We suggest six months.

34. Works Owners charge, by way of invoices, tree owners for damages caused by outages. After the 6 months the ability of works owners to charge for such damage to lines should prohibited.

6	Do you have any other comments on the common elements proposed across our options?
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With regard to the tables:

Risk assessment.

35. An independent expert should be used to undertake the assessment. Part of the assessment should consider any works that could be undertaken to the works to upgrade them to better deal with wind events. It is this element that requires an independent expert because if the Works Owner where to undertake such assessment they may not be objective on such issues.

Works owners' obligations

36. To avoid doubt the regulations should specify the Works Owners' obligations. These should include:

- All costs associated with clearing and, if necessary, removing the trees that are considered to be a treefall hazard
- Any directly associated costs and liabilities including New Zealand Emissions Trading Scheme (ETS) liabilities
- Obtaining any approvals or resource consents that are required to undertake the works

- Maintaining the powerline corridor thus created, via ongoing management of vegetation within the corridor to protect the safety of the lines. If trees are removed and the land is not grazed, vegetation (including trees) will regenerate. This maintenance obligation must be made clear in the regulations.

Provision for compensation

37. The regulations should be clear that compensation not just for the loss of a crop tree must take into account the loss of use of land, the use of forest land infrastructure, deforestation liabilities, administration costs and biosecurity costs such as pest management that arise from the land occupation of works.
38. The reference to the Public Works Act provisions of the Electricity Act 1992 is inappropriate. When that act deemed occupation of existing lines the concept of taking and occupying a corridor was not anticipated. Climate change legislation has been introduced since that time and potential losses for a tree/landowner now extend far beyond the cost of tree.

7	Do you agree with our assessment of the potential benefits and downsides of the alternative risk-based notice power (likelihood or impact)?
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39. Yes, this could lead to works owners undertaking overly-broad cutting which would tip the balance towards too many trees being removed with consequences to ETS liabilities and additional costs that are unlikely to be proportional to the benefits, in terms of increased security of supply and public safety. I.e. it could have the same downsides as the non-preferred option of widening the GLZ on priority lines.

8	Do you agree with our assessment of the potential benefits and downsides of the alternative mandatory assessment zone option?
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40. Yes. However, we do question evaluating the benefits and downsides with the impact of a cyclone the size of Gabrielle in order to “take” rights from tree/landowners.

9	Do you have any comments on further matters that should be taken into consideration when designing amendments to the Regulations that reduce the risks of treefall outages, particularly during severe weather events, without imposing unreasonable costs on stakeholders and consumers?
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41. Line companies are private companies that are making major profits. They have a legal remedy to protect their assets, that is by way of easement. They can also exercise the public works act to take land if so required. This process would let the costs fall to the appropriate party. The proposals do not evaluate the use of these processes. The proposals are not clear as to the extent of compensation for a tree/landowner for a deemed taking of land for a Works Owner to occupy a fall distance corridor. We can only assume that such costs have not been evaluated despite previous submissions outlining the costs that would fall on a tree/landowner by the creation of corridors.

Closure

We do not object to the submission being made public. We welcome the opportunity for further discussion and engagement.



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