



**The New Zealand Planning Institute's Response to the Proposed  
National Environmental Standard vis a vis Plantation Forestry**

7 August 2015

## **1. Introduction**

The New Zealand Planning Institute (NZPI) welcomes the opportunity to provide comment on the Proposed National Environmental Standard for Plantation Forestry (NESPF).

Established in 1949, NZPI is the professional organisation representing planners and planning practitioners throughout New Zealand. NZPI is the “home of the planning profession and achieves a better future for NZ by championing the profession, promoting excellence and supporting its members. It aspires to empower planners and promote excellence.” NZPI membership is broad, and individuals within our organisation have a varied range of opinions and experiences which underpin this submission.

This submission is the product of consultation with all members. This submission may not necessarily reflect the views of individual NZPI members, but rather, it reflects the views of a range of members, including minority views.

We provide our submission at a high level, on the knowledge that many of our members have made more specific detailed submissions.

## **2. General Intent of the NESPF**

NZPI acknowledges the objectives of the NESPF; being to remove unwarranted variation, improve certainty of RMA processes, improve certainty about environmental outcomes and contribute to the cost-effectiveness of the resource management system. NZPI concurs that there is room for standardisation of practice within the industry and that such standardisation would provide better certainty for applicants, councils and the general public.

NZPI requests that MPI consider a number of matters which have been raised by our members. Key amongst those is the fact that the objectives of the NESPF do not include the achievement of better environmental outcomes.

Some of our members also consider that there is a lack of rationale provided as to why a national environmental standard is being developed for plantation forestry when there are other activities that have the same or similar effects. The premise of the RMA is on managing effects, rather than the management of activities. As an example, some of our members do not understand the rationale that sees earthworks rules, sediment discharge rules or river crossing rules for forestry varying from those for farming or for subdivision. Some NZPI members consider that there are far greater opportunities for standardisation in respect of looking at providing greater consistency and certainty across matters such as earthworks, sediment discharge and river crossings than limiting consideration to a singular activity.

NZPI therefore recommends that the Crown consider:

- whether taking an activity based approach to managing effects is appropriate; and
- the potential impact that the proposed NESPF may have on plan development and resource consent assessment in terms of the permitted baseline.

## **3. Alignment with the RMA and national direction**

Some members of NZPI have expressed concern that the NESPF does not “talk to” or is aligned with other

national direction, leading to confusion and uncertainty. In particular, the NESPF does not appear to be aligned with the National Policy Statement for Freshwater Management (NPSFM), regional councils' statutory responsibilities to manage the risks of pest species and regional council and territory authority responsibilities in respect of matters contained in sections 6, 7 and 8 of the RMA. A potential risk of this lack of alignment is for example, the development of effects gaps within the NESPF and that fail to provide councils with the ability to impose more stringent provisions where there are potential effects on all the matters contained within sections 6 to 8.

NZPI recommends that the Government considers these potential areas of misalignment before progressing further. NZPI also notes that regional councils and their communities are engaged in giving effect to the NPSFM and have until 2015 to do so with their communities and stakeholders and that the NES may intrude upon that engagement.

#### **4. Regulatory Framework and Cost Recovery**

Another major concern of some of our members is that the regulatory framework proposed in the NESPF would result in significant additional costs to determine compliance, with no available mechanism to recover the costs of such assessment. There is concern that the NESPF places emphasis on remedying adverse effects with very little emphasis on avoiding adverse effects in the first place. This emphasis on curative remedies rather than preventative ones does not sufficiently protect environmental values or enable better environmental outcomes.

Another area of concern is the use of the Land Resource Information (LRI) dataset to produce the Erosion Susceptibility Class map which forms the framework for the NESPF; in particular it is perceived to possess a number of deficiencies for the purpose intended. Members question if more up-to-date slope stability software can be used to produce a more detailed and reliable national map of erosion susceptibility. They are of the view that there is sufficient data and information available to perform this for the whole country and that LiDAR data is not required to do this.

In respect of the proposed rules, some members consider that they do not sufficiently match the erosion susceptibility even as currently mapped. In particular, they note that the rules relating to Erosion Susceptibility Classes 'Low', 'Moderate' and 'High-Under 25 degrees' are all identical despite the fact that on the ground, the erosion risks increase through these classifications.

Under the NESPF, councils would need to assess proposals for plantation forestry activity within their districts/regions in order to decide whether consent is required, as well as monitor existing plantation forestry activities for compliance with the NESPF. Given the design of the NESPF, this would take considerable council time and resources, making it a cost imposition on councils and ultimately on the ratepayer.

With no current ability to recover such costs, this places a significant burden ultimately on the ratepayer to ensure that plantation forestry operators are complying with the NESPF; that is, the ratepayer would be subsidising the assessments and monitoring required to determine the activity status of plantation forestry and compliance with the NESPF. While it is acknowledged that there are social benefits arising from good plantation management, it appears unfair and inequitable for ratepayers to be bearing the burden of the costs of monitoring and enforcing compliance where there is a risk of operators externalising environmental impacts.

Further, some of our members consider that with reduced means for council input and control, no measurable thresholds, a reliance on a permitted activity framework and with such an overwhelming

proportion of the country covered by this regime, all mean that adverse effects can occur before any meaningful constraints can be applied. There is concern that the NESPF is enabling a voluntary Code of Practice to be embedded as a permitted activity, undermining the purpose and integrity of the RMA.

NZPI notes that the NESPF relies upon complex assessments and judgements to be made to determine activity status. The resulting determination of activity status is likely to be open to interpretation and dispute, which has the potential for costly delays. Again, there is concern that these delays would be in part at the expense of the ratepayer.

NZPI questions the workability and reliance placed on highly specialised assessments. Some of the assessments required, such as for wilding tree dispersal and fish spawning, require detailed knowledge of environmental and biological science. It is unlikely that many councils or forestry operators have the capability to undertake such assessments themselves. This again adds to the costs and complexities when determining if a matter is permitted or not, and may act to deter councils and forestry operators from undertaking them altogether, thus undermining the whole intent of the NESPF.

Another matter raised in respect of the workability of the NESPF was whether councils would have the ability to require changes to plans that must be provided in advance of operations commencing, including requiring amendments or resource consent if conditions are not being met. There appears to be gaps in the regulatory framework proposed that require addressing. In particular, there is concern that adverse effects will still occur in the three zones, despite the need for erosion and sediment control plans and for earthworks and harvest plans for harvesting, as any requirement to obtain a resource consent is only triggered by non-compliance with the permitted conditions. In other words, an adverse effect has to occur before a council can require a consent or changes to harvest and/or erosion & sediment control plans.

As it stands, a plantation owner is only required to make a harvesting plan and/or an erosion & sediment control plan available to the council. While they are required to notify the council, they are not specifically required to submit these to the council – councils will have to proactively request the plans. Some members believe this will inevitably lead to an increase in non-compliance with NES conditions and complaints about operations. In addition, if the council determines that one of these plans is unsatisfactory, there is no process under the permitted activity status to do so.

Finally, many of our members are concerned that some of the permitted activity provisions require subjective assessments and as such, do not have the necessary level of certainty to meet the standards set by case law for permitted activities. NZPI recommends that the provisions are assessed against the tests for permitted activities set out in the Environment Court decision on Carter Holt Harvey vs Waikato Regional Council A123/08, being that a permitted activity must:

- (a) be comprehensible to a reasonably informed, but not necessarily expert, person;
- (b) not reserve to the Council the discretion to decide by subjective formulation whether the activity is a permitted activity or not; and
- (c) be sufficiently certain to be capable of objective ascertainment.

That same decision sets out further tests for a permitted activity as being that a permitted activity must:

- be clear and certain
- not contain subjective terms
- be capable of consistent interpretation and implementation by lay people without

- reference to council officers
- not retain later discretions (decision making) to council officers

NZPI recommends that the Government also consider elevating the permitted activity framework to a controlled activity so as to provide certainty, consistency and a mechanism for councils to assess applications, seek changes to erosion and sediment control plans and harvest plans and recover associated costs. It would also provide greater certainty for operators and the wider public, and assist to achieve better environmental outcomes.

#### **Contacts**

NZPI appreciates the opportunity to respond to the proposed NES and hopes that its views will be considered as a constructive contribution to the development of this important guidance document.

Should you have any queries please do not hesitate to contact either Bryce Julyan, Chair of NZPI (Bryce.julyan@planning.org.nz) or Susan Houston, CEO of NZPI (susan.houston@planning.org.nz or 09 5206277 ext 3)

Yours sincerely



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