Minister for the Environment  
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REVISED PROPOSED NES FOR PLANTATION FORESTRY: SUBMISSION BY NORTHPower LTD  

1. Thank you for forwarding a copy of the proposed NES for Plantation Forestry ("the proposed NES" or "the revised NES") as revised by the recommendations of the Main Working Group. The opportunity to make further comments is welcomed and appreciated.  

2. Northpower Ltd (Northpower) does have major concerns about some aspects of the revised proposal, largely arising as a result of the removal from the proposed NES reference to infrastructure and network utilities in respect to setbacks and the ability to be more stringent. These are detailed below.  

3. First however, to provide context for the comments that follow it is worth reiterating briefly the nature of Northpower’s business operations and the reasons for its interest in the proposed NES.  

Northpower Ltd  

4. Northpower Ltd ("Northpower") is a Northland-owned community trust responsible for providing a sustainable electricity and telecommunications distribution network to consumers in Northland and elsewhere. Northpower, and its predecessor, the North Auckland Electric Power Board, has serviced the Whangarei and Kaipara districts for over 80 years. It is the largest distribution contractor in New Zealand with 10 office locations across the North Island. Around 53,000 electricity customers are connected to its lines network which covers an area of some 5,700 square kilometres.  

5. The Northpower owned and operated electricity lines network in the Whangarei and Kaipara districts provides the infrastructure necessary for energy companies, such as Meridian, Genesis, Contact, Mercury, and Empower, to generate, purchase, distribute and sell electricity to its customers. In simplified terms, the lines network owned by Northpower is the conduit from the high voltage transmission lines of the National Grid owned by Transpower to the individual homes and businesses for consumption by domestic and commercial users.  

6. The difference between the operational and maintenance regimes of Transpower-owned lines and Northpower- or other distribution company-owned lines is that one (Transpower) has statutory rights of protection from the effects of surrounding activities, including by way of a National Policy Statement and a National Environmental Standard, and the other (Northpower/distribution companies) does not.  

General  

7. In principle, Northpower remains supportive of a National Environmental Standard for Plantation Forestry (NES). It suggests however that the Outcome Statement as currently written in the revised NES incorrectly reflects the purpose of the NES and its role under the Resource Management Act 1991 (RMA).
8. Read literally, the outcome statement established by the Main Working Group is neither workable nor achievable. It requires the consistent and sustainable management of natural and physical resources to be achieved solely by the use of good forestry practices. With respect, that is not a likely outcome from an NES for forestry plantations. The sustainable management of natural and physical resources per se is the purpose of the Act itself, and we all know what a complex piece of legislation that is.

9. The focus of and thus the outcome looked for from an NES for Plantation Forestry must surely be on the consistent and sustainable management of forestry plantations, not natural and physical resources per se. The way in which sustainable management of such plantations might be achieved will undoubtedly require the use of good forestry practices, but in conjunction with a framework of regional and district plan rules providing consistent guidelines throughout the country.

The proposed NES in the context of the RMA

10. The removal of reference to set backs from utilities, and electricity lines in particular, and the ability to be more stringent to outside the scope of the proposed NES is of major concern to Northpower. Northpower fails to understand the reasoning behind this decision which it sees as not in accordance with the purpose and principles of the RMA.

11. From discussion with Ministry for the Environment officers prior to release of the revised NES, it appears that the main working group (MWG) considers that utilities, and electricity providers in particular, have other means by which they can pursue the protection of the assets and ensure setbacks. On that basis, the MWG sees no need for the proposed NES to consider the effects of plantation forestry on such assets.

12. With respect this reasoning is flawed. It illustrates a lack of understanding of the purpose and principles of the RMA generally and the purpose and role of the proposed NES in particular.

13. Section 5 of the RMA sets out the purpose of the RMA. Of relevance and importance in this context is the requirement to manage the use, development, and protection of natural physical and resources while among other things, avoiding, remediing, or mitigating any adverse effects of activities on the environment (s 5(2)(c)).

14. Ignoring for the minute the revised outcome statement of the proposed NES, the objectives clearly indicate that the purpose of the NES is an attempt to reduce litigation, increase certainty, and provide consistency in the manner that plantation forestry is treated throughout the country. To achieve such certainty and consistency, the NES will identify at a national level, standards that must be followed by regional and district councils.

15. In other words, the purpose of the NES for Forestry Plantations is to identify a consistent framework of rules and standards throughout the country for plantation forests so that foresters will know with certainty what is required regardless of the location of the plantation forest.

16. But - the NES sits within the framework of the RMA. The RMA requires all activities to internalise effects. This comes through clearly in the purpose (s 5(2)(c)), and in the general duty imposed by section 17 of the RMA. Indeed the duty imposed by s 17 is a requirement to avoid, remedy, or mitigate effects on the environment regardless of whether the activity is permitted by the rules of the plan holds a resource consent, or is in accordance with a national environmental standard. The s 17 duty has also been applied to activities with existing use rights (Lendich Construction Ltd v Waitakere CC EnvC A077/99).
17. Plantation forestry is a land-use activity. Like all activities it will have effects on the environment. The definition of the environment within the RMA is broad, encompassing people, ecosystems and communities. Case law shows the environment also includes those activities already existing.

18. Electricity line networks are already existing. To comply with the requirements of the RMA, the NES for Plantation Forestry must therefore consider and include rules and standards necessary to avoid, remedy, or mitigate the effects of plantation forestry on the electricity networks.

19. Trees or branches will fall from time to time. It is not possible to know when or where this will occur, and thus the potential adverse effects of the tree or branch fall cannot be controlled or internalised. The Environment Court has indicated that if effects cannot reasonably be controlled internally, buffer zones may be appropriate (Winstone Aggregates Ltd v Papakura DC, EnvC A096/98).

20. The effect of tree fall on power lines can be catastrophic for both the forest owner (fire), the line owner and the consumer (power outages). An appropriate setback (i.e. a buffer zone) from the power line will therefore have benefits for both parties.

21. The Court has also accepted that it is legitimate to make rules to restrict activities where reverse sensitivity is an issue. It has found in particular that such constraints are appropriate where long established activities cannot internalise the adverse effects and the continued presence of the activity in the area is nationally, regionally or locally important (Winstone Aggregates Ltd v Papakura DC).

22. That the transmission and distribution of electricity is nationally important cannot be contested.

The effect of the NES on Regional and District plans

23. A regional or district plan must implement the provisions of an NES, and unless specifically allowed by the NES cannot provide for more (or less) stringent rules than the NES.

24. So applying this framework, the result of a decision to remove from the NES reference to setbacks and the ability to be more stringent in respect to utilities and in particular electricity networks, has the effect that no provisions relating to the effects of forestry on electricity networks can be included within a district or regional plan. That cannot be what was envisaged by Parliament.

25. A decision that effectively removes the ability for district or regional plans to include provisions that require the effects of plantation forests on electricity networks to be avoided, remedied or mitigated will therefore be contrary to the RMA.

26. The fact that there may be means outside the RMA for Northpower and other electricity distribution companies to provide for and protect their assets is irrelevant. To comply with the RMA, the NES for Plantation Forestry must deal with and provide a framework for managing the effects of plantation forestry on other activities. That is so regardless.

27. It is important to remember also, that there is no specific protection for electricity distribution lines or for transmission lines owned by distribution companies under the RMA.

Conflict with other legislation

28. There is an argument that setbacks from utilities will have consequences for forest owners under Climate Change legislation, and the ETS in particular. Northpower acknowledges...
that the conflict in this regard will be difficult to resolve. It is Northpower's submission however that the conflict is not a matter for consideration under the NES for Plantation Forestry; rather it is a policy issue that falls to be considered and decided at a political level in government. It cannot - and should not - be resolved by not complying with the requirements of the Act under which the NES sits.

29. The NES sits within the RMA. Its formulation therefore must be in accordance with the purpose and principles of the RMA. The clear requirement within the RMA is for internalisation of effects by all activities.

30. The jurisprudence around the definition of effects on the environment shows that economic effects on the applicant or loss of profits are irrelevant considerations under the RMA (Golden Bay Marine Farmers v Tasman DC, EnVC W019/03). While the broad aspects of economic efficiency under s 7(b) may be relevant, the profitability of a venture or maximum financial yield for a developer is not (NZ Rail Ltd v Marlborough DC [1994] NZRMA 70 (HC)).

31. Further, s 85 of the RMA provides that compensation is not payable in respect of restrictions or constraints on the use of the land imposed by a provision in a district or regional, unless that provision would render the land incapable of reasonable use.

32. Setbacks from utilities such as electricity line networks are unlikely to render the land as a whole incapable of reasonable use. Rather they are more likely to avoid, remedy or mitigate the effects of the forestry plantations on the electricity networks and/or vice versa by reducing the risk of lines downed by fallen trees or branches causing power outages and/or consequent fire. Setbacks would therefore be of benefit to both land users.

**Existing mechanisms for protection of electricity networks**

33. The need to protect the transmission network owned by Transpower has already been recognised under the RMA (NPS for Electricity Transmission (NPSET); Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (NESTA)). As noted earlier, surprisingly there is no such protection for distribution lines, many of which technically have a transmission function and may be strategic at both district and regional level.

34. With respect, there seems little point in ensuring the transmission of electricity by Transpower is protected, if its transmission by others and distribution to the actual consumers is not similarly protected. That of course is a policy decision and not a matter for consideration in the context of a proposed NES for plantation forestry.

35. What is relevant however is the assumption by the MWG that because electricity providers have statutory rights and powers within and outside of the RMA no consideration to the effects of forestry plantations on electricity networks need be included within the proposed NES for Plantation Forestry. The flawed nature of that assumption has been discussed earlier in this submission.

36. For completeness, it is worthwhile to consider the rights and powers available to Northpower and other electricity distribution companies, and the effectiveness of those provisions.

**The Electricity Act 1992**

37. Electricity distribution generally occurs by way of overhead lines or underground cables. Separation distances are necessary both for safety (the potential for electrocution) and operational reasons (prevention of disruption to power supply and consequent effects).
5.

The importance of a secure and resilient electricity supply has been long been recognised and since 1992, specifically by the Electricity Act 1992 and the Regulations produced under that Act, Electricity (Hazards from Trees) Regulations 2003 (“Tree Regulations”).

38. Section 22 of the Electricity Act provides ongoing rights and protection for existing lines. Commonly referred to as a “statutory easement” it ensures ownership, access and maintenance rights to the line owner. The primary purpose of the Electricity Act is electrical safety, and as a consequence it does not adequately deal with or avoid the effects of land use activities in the vicinity of the lines. Nor should it. Dealing with adverse effects of land use activities is the function of the RMA.

The Tree Regulations

39. The purpose of the Tree Regulations is twofold; to protect the security of the supply, and the safety of the public. To achieve the purpose, “growth limit zones” from the electricity lines are established within which trees must not encroach. The Regulations provide for the initial trimming of trees at or near the growth limit zone by the lines owner or operator at no charge to the land or tree owner, but thereafter the responsibility to maintain the trees falls on the land or tree owner.

40. The Regulations are reactive (allow action when an issue arises), not proactive (avoiding the issue before it arises), and in Northpower’s experience, simply do not work. Application of the Tree Regulations on the required per tree basis is inefficient and inappropriate for commercial operations involving trees. Some forestry owners abuse the process, others simply do not care and refuse to give cognisance to Northpower’s rights under existing legislation.

41. Attached are photographs of forestry plantations in the vicinity of power lines clearly showing trees and branches encroaching into the growth limit zones. As a result Northpower deals with many incidents where power outages have been caused by trees or branches on the lines. A recent such incident resulted in a network outage of several hours, incurring costs of $100,000 and causing damage to a commercial operation. Some forestry owners cause more problems than others, with a few causing repeated significant incidents.

Northpower Initiatives

42. The Tree Regulations require a Cut or Trim Notice to be issued for each tree of concern. In order to increase cost efficiencies and avoid multiple notices for adjacent trees, Northpower attempts to gain tree agreements with the forest owners. Ideally, an agreement for an entire forest would be obtained, but foresters have generally been unwilling to take responsibility in this way.

43. To date Northpower has 48 tree agreements recorded for forests owned by Carter Holt Harvey, Hancock Forests, and Rayonier NZ Ltd. A random assessment of 27 of these agreements show collective associated proactive maintenance costs of $104,577.37, charged to the Northpower network.

44. Interestingly, and of relevance to the objective seeking a self-management regime, the majority of the tree agreements relate to four forests which require repeated attendances by Northpower. Further analysis reveals 19 outages directly attributable to forestry in the past 5 years. Many more are recorded during storm events and recorded as adverse weather being the cause.

45. In recent times Northpower has trained its arborists in the requirements of the network, and sought to use them to educate foresters of the legal requirements and good practice
methods. This initiative seems to be having some effect with evidence of the development of good working relationships between the arborists and foresters in Northland.

Private Plan Change 117 to the Whangarei District Plan

46. Because of its concerns over the effects of development on its network, and the lack of protection for critical infrastructure within the plan, Northpower recently took the proactive step of requesting a private plan change to the Whangarei district plan. Private plan change 117 sought rules providing setbacks from Northpower’s sub-transmission network, defined as critical electricity lines (“CEL’s”), and the inclusion within the plan of reference to the mandatory requirements of the electricity industry.

47. The proposed rules identified trigger distances from the CEL’s within which development would require a resource consent, thus enabling consideration of the effects of activities in proximity to the infrastructure on a case by case basis.

48. There was a number of submissions in the first instance, with concerns ranging over the spectrum from visual and health related effects, to effects on property values and restrictions on land use. Northpower worked closely with the submitters and the Council, and for the most part was able to resolve, reduce or allay the concerns.

49. Interestingly, the most vociferous submitter was a landowner with plans to potentially plant an avocado orchard in the future. His objections epitomize the worst (but unfortunately not infrequent) response to the existing mechanisms for the protection of electricity distribution lines. In his opinion, he should be able to do whatever he likes on his land without cognisance to the electricity lines serving the community which cross his land. He refused to agree to an easement to protect the route of the lines but which did not seek to restrict his activities on the land, and also indicated his annoyance that Northpower had had the temerity to trim his trees and then try to charge him for doing so.

50. A copy of the reply by Mr Hood, the planner engaged by Northpower to assist with the private plan change, is attached for your consideration. It makes interesting reading, not only in respect to the attitude/concerns of the various submitters, but also in its discussion of the synergies between electricity standards and regulations and the RMA, and the reasons why the existing electricity legislation is inadequate to provide for sustainable electricity networks and accommodation under the RMA framework is necessary.

51. The hearing for PC117 has recently been completed and the decision is awaited. Indications from the planners report to the hearing were favourable, endorsing in large part the requested changes. Acceptance of PC117 and incorporation of its provisions into the Whangarei District Plan will resolve Northpower’s concerns with respect to the protection of its network in the Whangarei district.

52. Northpower is extremely concerned that the relief that has been sought by way of PC117 would no longer be possible if the proposed NES becomes operative in the current form. This would leave the network without any planning mechanism to address the sustainable management of existing electricity lines and forestry operations as a land use activity.

53. The plan change exercise has cost Northpower to date in the vicinity of $100,000. Northpower’s network spans across 2 districts and is close to the boundaries of 2 others. Presently Northpower Contracting operates in ten other districts, and could potentially establish operations in other districts. If the same exercise was required to achieve consistency throughout the country costs could be in the vicinity of $6 million.
54. Alternatively, the NES for plantation forestry could ensure the effects of forestry activities are avoided, remedied or mitigated by reinstating a requirement for setbacks from utilities and the ability for Councils to be more stringent in the proposed NES.

Conclusions

55. Removal of reference to setbacks from utilities and the ability to be more stringent from the revised NES renders the proposed NES contrary to the purpose of the RMA in that it does not adequately consider or avoid, remedy, or mitigate the effects of plantation forestry on utilities in general and electricity networks in particular.

56. Setbacks should be required at the time of afforestation and at the time of replanting. The general duty in s 17 of the Act is applicable to existing uses.

57. Self management of forestry plantations essentially retains the status quo. The status quo is not working. Some form of enforcement mechanism needs to be included within the proposed NES.

58. The Outcome Statement of the proposed NES should relate to the purpose – i.e. consistent framework for management of plantation forests – not natural and physical resources in general.

59. Consideration of the possible conflicts between the proposed NES under the RMA and the requirements of the ETS under Climate Change legislation is a policy matter for political resolution; not a matter for consideration in the formulation of the proposed NES.

Decision sought

60. Northpower requests the MWG and the Minister to take account of the matters raised herein and in Northpower’s earlier submission dated 18 October 2010, including that portion relating to the decision sought. A copy of Northpower’s submission of 18 October 2010 is attached for ease of reference.

On behalf of Northpower Ltd

Dated

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