7 June 2011

Ministry for the Environment
PO Box 10362
WELLINGTON 6143

Dear Sir/Madam

Proposed NES for Plantation Forestry –
Comments on Revised Proposal

Council and its officers became involved in this NES proposal as soon as it became aware the New Zealand Forest Owners Association had successfully persuaded the Minister it was a path to be followed. Preliminary comments on an issues and options report were provided on 8 October 2009, followed by a formal submission on the proposal on 15 October 2010. Trevor Freeman, Environmental Services Manager, has been on the main working group and the erosion susceptibility classification sub group. This depth of involvement has been because this is a very significant matter to the district. Plantation forestry currently covers 158,000ha of the district and is increasing. Various government incentive schemes and policies have seen this concentrated on the most erosion-prone lands, for which this district is renowned. The proposed NES threatens to unwind good relationships with forestry interests, lower present environmental standards set through Council’s statutory plans, and impose considerable unnecessary costs on Council and the community.

Council’s involvement throughout the NES development process does not indicate support for the revised proposal. Council does not believe an evidential case for a Plantation Forestry NES has been made and remains opposed to the proposal.

Some useful changes have been made to the notified proposal, but fundamental flaws remain as described. Council is grateful for this second submission opportunity, albeit to an exceedingly tight timeframe. As Council does not meet again until 30 June, this should be treated as a staff commentary until then. If there are any changes these will be advised on the day.

If there are any queries, staff will be available to respond as required.

Yours sincerely

Hans van Kregten
Group Manager Environment and Policy
2.1 Outcome and Objectives

The listed outcome statement and objectives are consistent with those in Council plans that are already in effect. There is no further analysis to determine if there is a problem to be solved in the light of submissions received on the proposed document. A case for intervention has not been made. Council remains opposed to a NES for Plantation Forestry.

Table 1: Sustainable land management is about preventing and mitigating soil erosion and downstream effects. Plantation forestry is a land use that on account of scale and the degree to which the land and vegetation is disturbed during clearfell harvesting poses particular risks to the land. This significance is reflected in the outcome statement, but not in Table 1. Sustainable land management is not a subset of biodiversity. It is a critical outcome in its own right.

4.2 Afforestation

Setbacks Public Road Areas: Setbacks for all formed public roads are supported. “Formed” would include unsealed (metalled) roads. In soft rock areas such as Gisborne District gravels and crushed rock available to surface roads are unavoidably not of high quality and breakdown easily under wet conditions when traffic loadings are high. Roads adjacent to forests will invariably be subject to very heavy traffic loadings when surrounding areas are being harvested. It is important that road surfaces are opened to the drying effects of sun and wind. For this very reason it is standard practice for privately owned forest roads to be “daylighted” by clearing trees in a strip either side prior to their use for harvesting. Forest sector representatives seek a NES that would impose substantial road maintenance costs on territorial authorities due to the effects of their forest planting activities. Council plans will invariably have similar requirements on trees planted for other than production purposes where shading effects are similar.

Setbacks “Earthflow Country”: When afforesting highly erosion-prone grassed or bare hill country it is very important that all the plantable land is initially planted without setbacks from riparian areas (which tend to be the worst eroding landscape component).

A 1m setback (which under normal forest planting densities is no setback at all) allows such total planting in parts of yellow areas where necessary to control erosion within the yellow area or immediately downstream. However “earthflow country” conveys no certain meaning as to where this should apply. “Earthflow” is defined, but not “earthflow country”. Irrespective of this, this total planting allowance may be required for the purpose of control of slump, streambank, slip or gully erosion, not just earthflow erosion. A suggestion is to use the term “for the purpose of controlling severe soil erosion or worse present within riparian areas at the time of afforestation”.

Setbacks - Sensitive Receiving Environments: The erosion susceptibility classification does not consider an assessment of offsite effects. Instream values do not consider what is downstream. Setbacks from the Coastal Marine Area do not cater for effects arising from way upstream. Hence the exception for sensitive receiving environments is supported.
Examples would be estuaries, coastal areas, dwellings and amenity features. Fitting of this requirement with certainty of meaning into permitted activity status is a difficulty created by the NES.

**Council’s Overlay 3A Rule** (repeated from October 2010 submission.) This was specifically put into the District Plan at the request of the Minister of Agriculture and Forestry to complement the East Coast Forestry Project. Without the rule, it was very likely East Coast Forestry Project funding would have been withdrawn. This requirement to establish trees is a more stringent provision than allowed for under the NES. The NES does not allow Council to be more stringent with afforestation. Therefore the NES will override the afforestation component of the Overlay 3A rule. Under the NES there will be no requirement to afforest the worst eroding land in the district and no regulatory support for the East Coast Forestry Project. While an ability for this Council to be more stringent could be included in the NES, this would:

1. preclude other Councils using a similar tool; and
2. move away from the NES concept.

**4.3 Replanting**

**Permitted Activity – Orange Areas:** Orange areas in the Gisborne district are all Class VIIe and include a large component of very steep hill country with skeletal soils prone to windthrow and soil erosion down to bedrock. Close to riparian zones woody debris easily falls into the watercourse. Existing forests have not had the benefit of “front loading” and for these forests it is inappropriate (and in breach of s43A(3) RMA) that all areas, especially above riparian zones, be permitted to be replanted with no conditions pertaining to tree species or exclusion areas. Presently, in this district the required exclusion areas and tree species requirements are able to be met by conditions on harvesting consents that follow a restricted discretionary path in circumstances of very steep slopes and thin soils. In the NES there should be a separate pathway for orange area existing forests that is able to exert control on or stop replanting of areas clearly unsustainable in clearfell plantation forestry.

**Clearance of Indigenous Vegetation within a Productive Area in Preparation for Replanting:** The term “within a productive area” is indeed too loose. It should be deleted and the clearance of regenerating cutover indigenous vegetation defined so as to exclude regeneration occurring in setback areas. This comment also applies to 4.4.

**4.4 Mechanical Land Preparation**

**Permitted Activity – Orange Areas:** Mechanical land preparation affecting the top soil should not be a permitted activity on orange areas regardless of slope. Slopes can be 35° plus, with skeletal soils. There needs to be a slope limitation (20° is suggested), and conditions concerning sediment control and revegetation for permitted activity status to apply. Otherwise this would result in s43A(3) RMA being breached.

**4.5 Harvesting**

**Orange Area Harvesting Status:** The proposal is that harvesting be a permitted activity in the orange area and a restricted discretionary activity where this is “earthflow country”.

As explained in 4.3 “earthflow country” is undefined and is an unhelpful description of those parts of the orange area that require specific conditions to contain adverse effects.

The sorts of conditions that are essential across parts of the orange area but are unable to be applied in the proposal as drafted include partial catchment harvesting to address gully erosion downstream, log suspension and haul direction over or clear of waterways, and mandatory replanting.

The inability to apply such conditions would result in the breach of s43A(3) RMA. Controlled activity status (with non-notification) would supply the necessary flexibility whilst giving the certainty of harvest forestry interests’ desire.

**Notification:** Harvesting operations are often large scale and ongoing. It is of no value to receive notice of harvesting within 20 working days if it merely signals the start of harvesting commencing for a 20 year period. Notification should be required within a set time period of harvesting occurring. Twenty to 120 working days would be reasonable. This also applies to 4.7.

**Riparian Disturbance:** The permitted activity condition relating to harvesting within or across a riparian zone requires debris etc to be placed where it will not enter any watercourse to the extent that it causes diversion, damming etc. This is a reactive condition in that no breach will occur until diversion, damming etc has occurred. It should read may cause so that effects can be prevented and at a place when the owner of the debris is certain.

**Matters over which Discretion Applies:** Those listed are far too restrictive to address the erosion and biodiversity issues within the red area. They need to also include those matters over which control is reserved. As they stand not even the standards applying for permitted activity areas would be able to be required. It is assumed this is a drafting error.

### 4.6 Pruning and Thinning to Waste

The definition of “thinning” is sufficiently loose to enable this activity to be used to effectively clearfell forest on highly erosion-prone sites and change to an unsustainable land use, as a permitted activity. A 150 stems per hectare residual stocking would mitigate soil erosion effects without affecting normal forestry practice.

### 4.7 Earthworks

**Maintenance and Upgrade of Existing Earthworks:** This is permitted. The definition excludes road widening. It should also exclude track widening, eg from a 3m wide track to a 7m wide road as the volume of earthworks and potential de-stabilising effects are considerable.

**Harvesting of Plantation Forestry in Earthflow Country Areas:** Comments in 4.5 pertaining to “earthflow country” apply. Presumably this is intended to refer to earthworks rather than harvesting.
4.8 **Quarrying**

**Fill or Spoil:** Soil conservation is a regional condition. Large dumpsites of overburden and quarry wastes on orange and red areas can easily have destabilising effects causing large slope failures. If not deposited into quarry excavations or removed off site, such deposits require site specific conditions of placement and stabilisation only available through a consent process. The inability to apply such conditions would result in the breach of s43(A)(3) RMA.

**R.O.A.R. System**

Analysing the stringency of plantation forestry rules in local authority plans by according numerical scores and ranking against the proposed NES is fraught with difficulties. It is a somewhat arbitrary exercise. What numerical values should be accorded to what conditions and what activity classes? It is easy to make incorrect assumptions. That the Gisborne District Council score was -1 prior to verification with Council staff and +34 afterwards speaks for itself. R.O.A.R. would appear to be an attempt to justify the neutrality of a NES across New Zealand as a whole, but in doing so it is likely to expose the differences in stringency due to such factors as land and receiving environments that a NES will level irrespective of environmental and community needs.

**Setback Distances**

These should all be horizontal measurements to take into account the needs due to slope, but are not always specified as such eg page 39.

**Forestry/Plantation Forestry Definition**

Part (a) includes land that has at any previous time been in planted forest and subsequently been harvested. That would not appear to be the intention.

**Red Area Public Notification Process**

Since 1997 Council has had statutory plan provisions in place that have allowed soil conservation rules to be considered without public notification or third party involvement. Under exceptional circumstances public notification can occur and has for two applications over this period. This provision has been very successful in avoiding/mitigating adverse effects while at the same time avoiding unnecessary consent processing delays. Having this non-notification provision for the orange area, but not the red seems unduly restrictive.

**NES Development Process**

To the Information Booklet stage the Plantation Forestry NES proposal has been developed in haste with limited consultation compared to the Statutory Plan process, and is the poorer for it. Without fear of rigorous analysis by the Environment Court, information used in development has included evidence of a source and kind that would not be accepted by that Court.

Terms such as “where practicable”, “best practical option” and “minimise” are recognised by planning professionals and the courts to be inappropriate in conditions and rules as they convey an element of discretion. Yet, they feature throughout the NES conditions, notably in the harvesting and earthworks sections. This results in “leaky” standards as they will be difficult to enforce. Where there is inbuilt uncertainty this will always result in a lower environmental standard than intended. Please refer to the Quality Planning website. Council urges the Ministry to address this area.