Template for comments on the proposed NES for Plantation Forestry

If you wish to make a comment, please complete the following form and forward your comments to the Ministry for the Environment, PO Box 10-362, Wellington 6143, or by email to standards@mfe.govt.nz, in time to be received no later than 5 pm on Monday 13 June 2010.

- You do not need to remake points make in your original submission.

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These comments are in addition to the original submission made by former Auckland Regional Council (“ARC”) Officers in October 2010, which broadly opposed the Proposed National Environment Standard (“PNES”) for Plantation Forestry.

Please note that due to the recent local government amalgamations in the Auckland region, the Auckland Council now supersedes the former Auckland Regional Council. However, these comments will retain broad consistency with the original ARC submission and mainly focus on the amendments associated with the revised proposal of this PNES.

We understand that the main changes in this revised proposal are associated with the application of the erosion susceptibility classification (“ESC”) mapping system (the so called “traffic-light” system), and also include a number of amendments made to various Permitted Activity and Controlled Activity conditions, etc within the PNES.

Overall, we would like to state that we still oppose the PNES for Plantation Forestry. The additional amendments, as stated in this revised proposal, have not gone any way towards alleviating our original concerns. In fact these amendments have only amplified our concerns, especially in relation to the:

- perceived attempt to override or distort the potential implementation of a higher level Resource Management Act instrument or other legislation as follows:
  - requirements of the National Policy Statement: Freshwater Management 2011 which include “to safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the use and development of land, and of discharges of contaminants” and maintaining or improving the overall quality of fresh water within a region while “protecting the quality of outstanding freshwater bodies ... protecting the significant values of wetlands and ... improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated”;
Requirements of the Local Government (Auckland Council) Amendment Act) to protect nationally and regionally significant (freshwater and coastal) ecological areas;

- There has been no justification as to why earthworking, quarrying and river crossings, for example, undertaken within a forest should be managed differently to earthworking, quarrying and river crossings undertaken outside a forest;
- fundamentally permissive regime that has been adopted by this PNES;
- extensive range of “forestry activities” (including earthworks, works in beds of rivers and quarrying) that this PNES can be potentially applied to. This will have the effect of over-riding existing controls that already regulate these activities, creating inconsistencies in approaches and between and amongst other land disturbing activities;
- adoption of a predominant activity-based approach in favour of the RMA effects-based approach;
- possibility that this PNES does not meet the provisions of section 43 of the RMA;
- near lack of recognition given to the sensitivity of any associated receiving environments;
- use of data from the New Zealand Land Resource Inventory (“NZLRI”) (mapped at an inappropriately small scale of 1:50 000) to determine erosion susceptibility classifications;
- extensive use of ambiguous, uncertain and therefore potentially unenforceable terms in many permitted activity conditions;
- undermining good practice approaches as set out in the former ARC’s Technical Publication (“TP”) 233 - A Guideline for Erosion and Sediment Control;
- permissive precedent that this PNES may set for other industries and resource user groups; and,
- the weakening of the outcome statement due to the suggested amendments.

Q1: Do you agree with the changes to the afforestation section? □ Yes □ No

Comment

The revised proposal would make afforestation a Permitted Activity (subject to conditions) in green or yellow areas, and would also make a number of minor amendments to some associated PA conditions.

As indicated previously, these amendments do not mitigate any of our significant concerns (please see page 1 of this template) and these concerns should be read in conjunction with our comments on this specific activity.

In addition:
- What is the purpose of the setbacks, if there is no requirement to protect riparian margins or restrict subsequent damage within such setbacks?
- A minimum of a 1 metre horizontal setback for streams with a channel width less than 1 metre is completely inadequate and would fail to provide any protection.
- No detail on any timeframes associated with the auditing process. Any audit reports should be produced regularly, and not just be “available on request”. Any audits would be “self-audits”, which, from experience, can be of varying quality.

Q2: Do you agree with the changes to the replanting section? □ Yes □ No

Comment

The revised proposal would make replanting a Permitted Activity (subject to conditions) in green, yellow or orange areas, and would also make a number of minor amendments to some associated PA conditions.

As indicated previously, these amendments do not mitigate any of our significant concerns (please see page 1 of this template) and these concerns should be read in conjunction with our comments on this specific activity.

In addition:
- No definition of “failed planting” “regenerating cutover”
- Amendment includes the term “productive area”, which is a subjective term, and therefore inappropriate.
- No detail on any timeframes associated with the auditing process. Any audit reports should be produced regularly, and not just be “available on request”. Any audits would be “self-audits”, which, from experience, can be of varying quality.
### Q3: Do you agree with the changes to the mechanical land preparation section?

**Comment**

The revised proposal would make mechanical land preparation a Permitted Activity (subject to conditions) in green, yellow or orange areas, and would also make a number of minor amendments to some associated PA conditions.

As indicated previously, these amendments do not mitigate any of our significant concerns (please see page 1 of this template) and these concerns should be read in conjunction with our comments on this specific activity.

In addition:
- The PNES includes a definition of "mechanical land preparation", which extremely broad and therefore inappropriate.
- No detail on any timeframes associated with the auditing process. Any audits would be "self-audits", which, from experience, can be of varying quality.

### Q4: Do you agree with the changes to the harvesting section?

**Comment**

The revised proposal would make harvesting a Permitted Activity (subject to conditions) in green, yellow or orange areas, and would also make a number of minor amendments to some associated PA conditions.

As indicated previously, these amendments do not mitigate any of our significant concerns (please see page 1 of this template) and these concerns should be read in conjunction with our comments on this specific activity.

In addition:
- Reference to the "Best Practicable Option" has been retained. This is concerning since the RMA definition of BPO is worded in such a way that it contains considerable subjectivity, as well as allowing for the consideration of financial matters. For these reasons, the BPO approach should not be used as a PA condition.
- The permitted activity conditions are very permissive in nature. There are no conditions aimed at avoidance, or at least the mitigation of soil disturbance. There are also no timeframes stipulated for when soil stabilisation of exposed soil should be completed by – which should be at least before the next winter period.
- The condition “Stabilisation to avoid adverse effects of sediment in water bodies or accelerated erosion...” has been removed. This is welcomed, since the previous wording was extremely broad and subjective. However, it is concerning that this condition has not been replaced with a more appropriate condition in order to protect nationally or regionally significant (freshwater and coastal) ecological areas (as required by the Local Government (Auckland Council) Amendment Act), and “to safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the use and development of land, and of discharges of contaminants” and maintaining or improving the overall quality of fresh water within a region while “protecting the quality of outstanding freshwater bodies... protecting the significant values of wetlands and... improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated” as required under the National Policy Statement: Freshwater Management 2011.
- The condition relating to “riparian disturbance” has been retained. This condition is ambiguous, uncertain, and hence would be unenforceable. The term BPO is again used (see above comments)
- The condition relating to “Slash and debris management, Harvest planning...” contains the term “the party managing the activity...”. This term is extremely vague, and could apply to many persons.
- The “Slash and debris management” conditions contain many ambiguous and unenforceable terms such as “...appropriate to the scale and level of risk...”, “whenever safe and practicable to do so...” “potentially” and “likely” etc.
- No detail on any timeframes associated with the auditing process. Any audit reports should be produced regularly, and not just be “available on request”. Any audits would be “self-audits”, which, from experience, can be of varying quality.

### Q5: Do you agree with the changes to the pruning and thinning to waste section?

**Comment**

...
The revised proposal would make pruning and thinning a Permitted Activity (subject to conditions) in green, yellow, orange or red areas, and would also make a number of minor amendments to some associated PA and controlled activity conditions.

As indicated previously, these amendments do not mitigate any of our significant concerns (please see page 1 of this template) and these concerns should be read in conjunction with our comments on this specific activity.

Q6: Do you agree with the changes to the earthworks section?  
☐ Yes  ☐ No

Comment

The revised proposal would make earthworks a Permitted Activity (subject to conditions) in green or yellow areas, and would also make a number of minor amendments to some associated PA conditions. The maintenance and upgrade of existing earthworks for plantation forestry activities in green, yellow, orange, or red areas would become a Permitted Activity.

As indicated previously, these amendments do not mitigate any of our significant concerns (please see page 1 of this template) and these concerns should be read in conjunction with our comments on this specific activity.

It is extremely concerning that this proposed regime for earthworks allows for earthworks at potentially unlimited scales to be carried out in relatively close proximity to water bodies. Allied to this, the associated permitted activity conditions contain many ambiguous, uncertain and therefore unenforceable terms.

In addition:

- It is a concern that the PNES definition of the term “maintenance and upgrade of existing earthworks” is very broad, subjective and ambiguous, and as a result, could be used to include many activities at a wide variety of scales.
- The permitted activity conditions for “fill material” should require that no vegetation or wood should be included as fill material.
- Use of ambiguous, uncertain and unenforceable terms, such as “immediate vicinity”, “minimise the concentration of channelled flows”, “as soon as practicable”, and “as required” etc.
- The conditions relating to “Sediment discharge concentrations” have been completely removed. It is concerning that no receiving environment type conditions are intended to replace them. The Proposed NESPF will need to be amended to meet the requirements of the National Policy Statement: Freshwater Management 2011 which include “to safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater, in sustainably managing the use and development of land, and of discharges of contaminants” and maintaining or improving the overall quality of fresh water within a region while “protecting the quality of outstanding freshwater bodies .... protecting the significant values of wetlands and ... improving the quality of freshwater in water bodies that have been degraded by human activities to the point of being over-allocated”. Water quality standards will be required under this NPS.
- No detail on any timeframes associated with the auditing process. Any audit reports should be produced regularly, and not just be “available on request”. Any audits would be “self-audits”, which, from experience, can be of varying quality.

Q7: Do you agree with the changes to the quarrying section?  
☐ Yes  ☐ No

Comment
The revised proposal would make quarrying a Permitted Activity (subject to conditions) in green, yellow or orange areas, and would also make a number of minor amendments to some associated PA conditions.

As indicated previously, these amendments do not mitigate any of our significant concerns (please see page 1 of this template) and these concerns should be read in conjunction with our comments on this specific activity.

In addition:
- As this is only referring to quarrying material in a forest, it needs much tighter wording. It is unclear why quarrying inside a forest should be managed differently to quarrying outside a forest which is provided for under the Auckland Regional Plan: Sediment Control.
- The term, “activity site” is not defined, and is therefore uncertain.
- No detail on any timeframes associated with the auditing process. Any audits would be “self-audits”, which, from experience, can be of varying quality.

Q8: Do you agree with the changes to the river crossings section?  
☐ Yes ☑ No

Comment
The revised proposal would make river crossings a Permitted Activity (subject to conditions) in green or yellow areas, and would also make a number of minor amendments to some associated PA conditions.

As indicated previously, these amendments do not mitigate any of our significant concerns (please see page 1 of this template) and these concerns should be read in conjunction with our comments on this specific activity.

In addition:
- It is concerning that there are no receiving environment standards in any of the permitted activity conditions.
- A permitted activity condition is that the catchment of perennial rivers be less than 100 ha in size. A 100 ha catchment is quite large, and this threshold should be far smaller.
- Any audits would be “self-audits”, which, from experience, can be of varying quality. Any audit reports should be produced regularly, and not just be “available on request”.

Q9: Do you have comments on the detail of the ROAR system?

Comment
The information provided by the ROAR system is helpful.

Q10: Where the working group could not reach consensus, the areas in table 4 were highlighted blue. Do you have any comments about these issues?

Comment
It is extremely confusing to have various sections within a Proposed National Environment Standard unresolved, due to a lack of working group consensus.

It is unclear what this means for those unresolved sections – will they remain, or will they change again without any submitter input? It adds additional uncertainty to an already complex, unclear and highly permissive proposed NES.