SUBMISSION ON
PROPOSED NATIONAL ENVIRONMENTAL STANDARD FOR PLANTATION FORESTRY
(the Revised Proposal)

To: Ministry for the Environment
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Submission: Conditionally Support the Proposed National Environmental Standard

1 INTRODUCTION

1.1 Founded in 1993, Blakely Pacific Ltd, is the first international subsidiary of Port Blakely Companies based out of Seattle, Washington. We own and manage forestland in the South and North Islands of New Zealand. Our forest products, primarily Radiata Pine and Douglas-fir, are sold domestically in New Zealand and in log markets throughout Asia and the Middle East.

1.2 Blakely Pacific Ltd believes in sustainability. We grow more wood than we harvest, and every harvested area is quickly replanted. Our forest practices have been independently certified as meeting the standards of the Forest Stewardship Council (FSC) programme, an international certification dedicated to forest stewardship. This certification shows that we protect natural, cultural, and environmental resources on the land we own and manage.

1.3 Blakely Pacific Ltd’s Mission is: “In the spirit of stewardship, Blakely Pacific is dedicated to developing environmentally sensitive communities and growing sustainable forests to benefit current and future generations.”

1.4 Blakely Pacific Ltd’s first purchase in New Zealand was in 1994 being forests and lands located on Matakana Island in the Bay of Plenty. Since then, Blakely Pacific Ltd has made a number of other forest acquisitions including the purchase of a number of ex-New Zealand Forest Service assets owned by Ngai Tahu. In addition, the company has established a significant resource of young Douglas-fir tree farms in the South Island since the late 1990s. Blakely Pacific Ltd owns and manages a total of 29,608 hectares, of which 3,918 hectares is located in the North Island and 25,690 hectares in the South Island. In
addition to the fast growing short rotation Radiata Pine species, Blakely Pacific Ltd grows Eucalyptus and Douglas-fir. Some other species include Macrocarpa, Lusitannica, Ponderosa Pine, Corsican Pine, Cedar and Larch.

1.5 Blakely Pacific Ltd lodged a submission on the Proposed National Environmental Standard for Plantation Forestry (the NES) when first released in September 2010.

1.6 Blakely Pacific Ltd conditionally supports the NES, subject to the matters discussed below. Rather than traversing all of the detail in the revised proposal, this submission focuses on the matters where the working group could not reach consensus. It also provides some further comment on the key issue of bundling which remains of significant concern to Blakely Pacific Ltd.

2 KEY ISSUE - BUNDLING

2.1 Bundling is the key issue of concern to Blakely Pacific Ltd in relation to the NES. If this issue is not clearly and unambiguously resolved in the manner described below, Blakely Pacific Ltd would be strongly opposed to the NES.

2.2 The information booklet on the revised policy ("the Info Booklet") recognises that bundling is an issue of concern raised by submitters. This is reflected in the new objectives of the NES, which now specifically seek to ensure that the inappropriate use of bundling is addressed1.

2.3 Unfortunately these comments do not seem to have translated to any meaningful changes in the NES itself. The Ministry’s response identified in the Info Booklet is that "bundling potential was considered by the working group when assigning activity statuses to the various activities"2. However this provides no real confidence that the issue will not emerge as a significant problem for the forestry sector in the future.

2.4 In general terms, bundling is where all activities within a single proposal are considered under the most restrictive activity status. However this is not appropriate in all circumstances. Applying this approach to forestry activities under the NES has the potential to impose unnecessary and onerous consent requirements for no environmental benefit.

2.5 An example of how bundling could be inappropriately applied is where a plantation has land in a range of different erosion susceptibility zones, as is frequently the case. Where part of the plantation is in the red zone, activities in that location will generally require restricted discretionary consent. However a strict application of bundling could mean that all activities in the entire plantation require consent, even though the majority of the plantation may be in the green zone and comply with all permitted activity conditions.

2.6 This issue is discussed in detail in the original submission of Blakely Pacific Ltd with reference to relevant case law on how bundling should be applied. Rather than repeating that discussion in full, the key points to note are as follows3:

(a) Bundling does not apply to permitted activities.

(b) Bundling does not apply to controlled or restricted discretionary activities where:

(i) The consent authority’s discretionary judgment is relatively confined; and

(ii) The effects of the activities would not overlap or have consequential or flow on effects.

2.7 Blakely Pacific Ltd is very concerned that without clear guidance in the NES itself, these principles will not be adhered to by local authorities when applying the NES. This will lead

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1 Information booklet, pg 8, objective 4.
2 Information booklet, pg 11.
3 Refer to the decision in Southpark Corporation Limited v Auckland City Council A111/2000.
to:

- activities that were intended to be permitted being subject to an unnecessary consent process, an outcome that is directly contrary to the objectives of the NES⁴;

- activities that were intended to be processed as controlled activities⁵ being subject to unnecessary and more onerous requirements of a restricted discretionary consent process.

2.8 Blakely Pacific Ltd therefore requests that the NES document contains a clear and explicit statement about the issue of bundling that is consistent with the above case law principles. In particular, it should clearly state that bundling should not be applied to permitted activities (which do not require consent irrespective of the status of other related activities) or controlled and discretionary consents when the above requirements are satisfied.

3 ABILITY TO BE MORE STRINGENT

3.1 The ability to be more stringent should only exist where there is likely to be a significant adverse effect on a significant environment identified in a plan. If the environmental effect is no more than minor, more stringent rules or conditions are unwarranted.

3.2 There must be a reasoned rationale for applying more stringent rules or conditions, Blakely Pacific Ltd considers the above effects focused approach will achieve this. If this approach is not adopted, Blakely Pacific Ltd makes the following comments.

3.3 Outstanding natural features and landscapes

(a) The policy allowing local authorities to be more stringent where the activity takes place in outstanding natural features and landscape areas should only apply to afforestation, not reforestation. The ability to be more stringent on this issue creates uncertainty for existing forests and investors and presents a threat to investor expectations. It also gives rise to potential ETS liabilities for any reduction in the area of replanted forest.

(b) To address the uncertainty, the NES policy should address this issue rather than local authorities.

3.4 Setbacks from regionally significant freshwater

(a) The NES should specify the size of setbacks for regionally significant water bodies rather than leaving setback decisions to local authorities.

3.5 Setbacks from the coastal marine area

(a) Whilst it is a relatively limited issue (existing trees within 30m of the Coastal Marine Area), replanting of existing trees will be covered by existing use rights and any change to the setback will automatically result in ETS liabilities to the landowner.

(b) Remove replanting from the ability to be more stringent list for the coastal marine area.

3.6 Indigenous vegetation clearance

(a) Blakely Pacific Ltd is supportive of general indigenous vegetation clearance being governed by District Plan rules, with the exception of those aspects relating specifically to plantation forestry (understory, etc.) that are already covered in the relevant rules.

⁴ Information Booklet, pg 7, objective 2.
⁵ Controlled Activities must be granted.
(b) Amend the ability to be more stringent for indigenous vegetation clearance to not apply to indigenous vegetation that:

- has grown up under (or may have overtopped) production species; or
- is within an area of failed planting (within the last rotation); or
- is within an area of regenerating cutover; and
- vegetation overgrowing a pre-existing accessway.

3.7 The remaining changes made by the working party to the ability to be more stringent are supported, as they provide greater clarity as to the application of the ability to be more stringent section, and focus on issues of relevance to plantation forestry.

(a) Clarify in the ability to be more stringent section whether each provision is a district or regional matter.

4 AFFORESTATION

4.1 Setbacks from public roads

(a) The setback control should distinguish between afforestation and replanting. For afforestation, setbacks from public roads should only apply to paved (sealed) roads for the following reasons:

(i) There should not be one set of rules for the forestry industry and another for other industries or activities which create the same shading effect on public roads, such as shelterbelts and buildings;

(ii) The vegetation shading effect on unpaved roads is less than on paved roads as unpaved roads experience less traffic; and

(b) The setback from public roads should not apply to replanting. There would be significant impacts in economic terms and ETS liabilities if the setback applied to the replanting of existing forests because some existing forests adjoin lengthy sections of public roads, including State Highways.

4.2 Setbacks from perennial rivers/streams

(a) The 1m setback from perennial rivers/streams is sufficient to protect aquatic ecosystems, Blakely Pacific Ltd agrees with those in the working group that consider a larger setback for small streams is unnecessary.

(b) Setbacks for replanting could incur ETS liability. Since the ETS liability for setbacks >7.5m has not been resolved. Blakely Pacific Ltd disagrees with 10m setbacks. Blakely Pacific Ltd considers >5m setbacks should not have ETS liability.

(c) If there are to be setbacks >5m, the 10m setback from perennial rivers/streams should not apply to terrestrial habitats or sensitive receiving environments.

(d) Riparian setbacks are intended to protect sensitive waterways rather than preserve terrestrial habitats. Blakely Pacific Ltd considers it unnecessary for the presence of a terrestrial habitat to be an exception to the 1m minimum horizontal setback policy. Further, the meaning of "terrestrial habitat" is unclear and is not defined in the NES.

(e) The term "sensitive receiving environment" is unclear and leaves scope for ambiguity. Further definition of this term is necessary to ensure a clear understanding of the meaning of "sensitive receiving environment".

4.3 Notification of afforestation in orange areas
(a) *Blakely Pacific Ltd* supports non-notification of consent applications in orange areas and does not think the matter needs more consideration.

4.4 Restricted discretionary status for Afforestation in orange and red areas

(a) *Blakely Pacific Ltd* strongly opposes the restricted discretionary status of afforestation in the orange and red areas. Orange and red areas are the land in which future afforestation is both most likely to occur due to favourable land values, and the most desirable to stabilize that land. Despite what is indicated by the ROAR analysis, *Blakely Pacific Ltd* is concerned that the overall impact of a restricted discretionary status for afforestation in the orange and red zones is a significant increase in stringency above the status quo rules. This will have the effect of causing afforestation (which is almost universally Permitted over the bulk of land available for afforestation) to become almost universally Restricted Discretionary.

(b) In principle *Blakely Pacific Ltd* supports stringent rules relating to afforestation based on the principle of ‘front-loading’ decision making (i.e. ensuring the right decisions are made at the time of planting that would in return providing greater certainty to forest growers that at the time of maturity trees can be economically harvested and replanted). Given the significant investment in afforestation, and long time frame to realize a return, such certainty is essential to encouraging future planting. However, under the proposed NES *Blakely Pacific Ltd* considers that link has not been achieved. The end result has been tighter rules to afforest, with no greater certainty of forest owners’ ability to subsequently harvest. This is a key issue for *Blakely Pacific Ltd*. It cannot support this approach that will inevitably serve to deter afforestation that is needed in some regions.

5 REPLANTING

5.1 Replanting in orange area

(a) *Blakely Pacific Ltd* strongly disagrees with the suggestion that replanting in orange areas be subject to greater controls.

5.2 Indigenous vegetation clearance

(a) There is no need to further define the term “productive area”.

(b) *Blakely Pacific Ltd* disagrees with additional setback requirements from indigenous vegetation outside of the productive area.

5.3 Set backs from public roads

(a) The setback from public roads should only apply to paved (sealed) roads for the reasons expressed on this subject under Afforestation.

5.4 Setbacks from perennial rivers/streams >3m

(a) *Blakely Pacific Ltd* does not support the application of a 10m setback when replanting. As earlier mentioned, there should be no setbacks >5m. A 10m setback will mean greater ETS liability due to reduced area of replanted forest.

5.5 Replanting in red area a restricted discretionary activity

(a) Replanting in the red area should be Permitted, and not a restricted discretionary activity. The reasons for this are:

(i) ETS liability for any reduction in area of replanted forest;

(ii) The potential impact on forest values;
(iii) The restricted discretionary status adds no value in terms of managing erosion risk;

(iv) Once the area is harvested, the erosion risk is from loss of canopy cover and loss of root reinforcement. The most effective management method will be replanting tall vegetation. Regeneration to native will reduce the harvest cycle effects but this additional benefit is small and does not justify the potential loss of forestry production; and

(v) Earthworks are the key risk and are already subject to restricted discretionary controls.

(b) An alternative to restricted discretionary status is for full compensation of any ETS liability or other losses being payable by the Crown to affected forest owners for any areas restricted from replanting.

6 MECHANICAL LAND PREPARATION

6.1 Mechanical land preparation in green and yellow areas

(a) *Blakely Pacific Ltd* oppose the suggestion that mechanical land preparation in green and yellow areas default to restricted discretionary activity status where one or more of the conditions for a permitted activity is breached, but requirements for the archaeological conditions are met. *Blakely Pacific Ltd* considers the definition and permitted activity conditions are sufficient to control effects on low erosion.

6.2 Mechanical land preparation in orange areas

(a) *Blakely Pacific Ltd* disagrees with the mechanical land preparation in orange zones requiring consent. Generally, land preparation in orange areas is for the purpose of windrowing slash with very minimal ground and soil disturbance. It is not used for spotmounding or ripping which takes place on hard pan or frost flats in the green area and requires soil disturbance. The potential adverse effects can be managed through permitted activity performance standards.

(b) The need for consent to mechanically prepare land in orange zones would significantly impact reforestation.

6.3 Mechanical land preparation in red zones

(a) Mechanical land preparation for plantation forestry in red areas should be a Controlled activity to ensure comprehensive effects management.

7 HARVESTING

7.1 Additional suggested controls

(a) Additional controls on harvesting in orange zones, harvesting when subsoil is impacted, and harvesting at high value sites are opposed.

(b) If greater controls are imposed where harvesting impacts on the subsoil, a significant area of steep land will be subject to more onerous controls which creates unnecessary impediments for forest owners.

(c) *Blakely Pacific Ltd* disagrees with a 5m setback from riparian setbacks rather than from perennial water bodies. The application of setbacks on setbacks will, given long enough periods of time, result in net loss of productive land from each subsequent rotation. In extreme situations it will result in no productive forest but just one large setback.
(a) The installation of slash traps should be a permitted activity.

7.3 Harvesting in red areas

(a) Harvesting in red areas should be permitted rather than restricted discretionary. This will provide certainty to forest owners of tree accessibility. If conditions are not met the activity should default to a controlled activity status.

(b) If the above changes are not made, forest owners should be compensated by the Crown for all losses associated with not being able to harvest the trees.

8 EARTHWORKS

8.1 Slope for green and yellow areas

(a) It is unnecessary to limit the slope for the construction of roads, tracks and landings. The permitted activity performance standards are sufficient to control the effects of roads, tracks and landings construction.

8.2 Maximum area for yellow areas

(a) The maximum area limitation should not apply to the construction or roads, tracks and landings. This revised condition will mean that consents are required for most earthworks. The permitted activity performance standards adequately control the effects of roads, tracks and landings earthworks in green and yellow areas.

(b) Blakely Pacific Ltd suggests an alternative to area limitations on roads, tracks and landings, would be to limit gross soil disturbance.

9 QUARRYING

9.1 The condition which states quarrying activities are subject to applicable district conditions is unnecessary and defeats the purpose of quarrying in the NES.

10 RIVER CROSSINGS

10.1 Blakely Pacific Ltd supports the removal of the condition which states river crossing activities should be subject to district conditions for the same reason as the working party.

10.2 Catchment based controls

(a) Blakely Pacific Ltd opposes controls based on catchment size. This is not an appropriate trigger for controls on river crossings. The design culvert size is a more appropriate alternative, as suggested in the Info Booklet. Performance standards are better able to manage effects across a broad range of catchment hydrology.

(b) This point was expressed in Blakely Pacific Ltd’s October 2010 submission on the NES.

(c) There is no logical justification for regulation of river crossings based on catchment size. If there was, equity would demand that the rule apply to all productive rural landowners rather than just forestry.

(d) A more pragmatic approach would require structure designs (culvers and bridges) that incorporate actual or estimated flood flows regardless of catchment size. In reality it is the peak design flow that is important and this will be independent of catchment size on a national basis. The catchment based approach is problematic given the wide variability of flood flow that results from any given catchment. For example, a 100ha catchment in Canterbury will have completely different flood flow characteristics, annual return intervals and peak flow when compared with a catchment in the Coromandel.
(e) Direct flood flow analysis can be very easily correlated back to crossing design as knowledge related capacity requirements for structures are well understood. The HRDS software package developed by NIWA provides actual rainfall data that can be used to estimate peak flows from any location within New Zealand. Further work is being undertaken by NIWA to provide actual flood flows for catchments being capable of passing a 1 in 50 year flood are more than adequate and this can be undertaken independent of catchment size.

10.3 Construction methods

(a) Blakely Pacific Ltd agrees that the temporary diversion of rivers or streams around the extent of the works while construction is taking place is not always possible on steep country and could create more adverse effects.

10.4 Culverts

(a) Blakely Pacific Ltd supports changes to conditions around culverts so that they reflect practical issues and constraints. Blakely Pacific Ltd does not support and think it necessary to restrict maximum culvert size. There is a minimum culvert specification as small culverts are vulnerable to blockage. There is no apparent reason for imposing a condition specifying a maximum culvert size.

(b) The requirement for permanent culverts to be at least 600mm rather than 375mm will be significantly more expensive. The 375mm minimum culvert size is sufficient and any larger minimum culvert size is unnecessary.

(c) Blakely Pacific Ltd agrees that battery culverts should be permitted. A minimum 600mm battery culvert will manage blockage risk.

10.5 Activity status for river crossings

(a) It inappropriate to determine activity status of river crossings based on erosion risk of surrounding country. Provided the NES conditions for Permitted activities are met and best practice standards are followed river crossings can be made without affecting surrounding banks, regardless of erosion susceptibility.

(b) The condition which states that river crossings in earthflow country in yellow areas is a Controlled activity should be deleted. Earthflow areas should be mapped to determine their extent. If the earthflow areas only cover a small area, this condition may be unnecessary.

11 ROAR SYSTEM

11.1 Blakely Pacific Ltd considers the NES more restrictive in terms of rule compliance, compared to the largely "permissive" set of planning and regulatory documents under which the company currently operates. The majority of its plantation estate is within districts and regions predominantly in the South Island. These areas have a more enabling and self regulating approach to RMA planning than the proposed NES and other, mainly North Island, more stringent district and regional plans.

11.2 In particular, the bundling system provided by the NES means the NES is significantly more restrictive than local and regional plans in this respect. This point is discussed in detail under paragraph 2.

12 EROSION SUSCEPTIBILITY MAPS

12.1 Blakely Pacific Ltd supports the concept of erosion susceptibility areas, and is supportive of the additional colour included in the revised proposal.

12.2 The broad scale of the LUC mapping has resulted in polygonal boundaries that are inaccurate for the purpose of supporting an NES. A reliable process needs to be in place to allow future changes to the erosion susceptibility boundaries. A governing panel should
ensure that the changes are reflected in the LUC database.

12.3 Blakely Pacific Ltd considers that the NES will not deliver the necessary benefits required to justify its approval under the RMA unless a robust process is established to resolve boundary mapping issues regarding the erosion susceptibility maps.

13 CONCLUSION

13.1 Blakely Pacific Ltd supports the NES provided that the issues above are addressed to simplify compliance obligations on the plantation forestry sector. In the absence of the requested amendments to address these concerns, Blakely Pacific Ltd cannot endorse or support the proposed NES.

Dated 16 June 2011

C S Fowler for and on behalf of Blakely Pacific Ltd