## Submission: A National Environmental Standard for Plantation Forestry (NES-PF)

### Introduction

Thank you for the opportunity to submit on the discussion document “A National Environmental Standard for Plantation Forestry” (NES-PF).

In its previous submission to the Ministry for the Environment in October 2010 the Council stated that:

*“ it is considered that the proposed NES for plantation forestry is a blunt instrument to resolve what is effectively an administration (as opposed to environmental) issue. This issue may not occur in all localities and seems to be most relevant for the large forestry companies which operate in a range of areas and therefore can suffer the inconsistencies between local authorities. There are other ways that such issues can be resolved where they do exist.”*

The Council notes that the issue being addressed in the current document has been refined to be “unwarranted variation” between plans. However, the Council remains concerned that the NES-PF is not the most effective or efficient method for resolving this issue for the reasons set out in that original submission.

The primary focus of the Council’s submission is the three “environmental risk assessments tools”.

### Erosion Susceptibility Classification

The Council notes that a review of the ESC has been undertaken and that this was informed by the document “Update of the Erosion Susceptibility Classification (ESC) for the proposed National Environmental Standard for Plantation Forestry - revision of the ESC”. The result of that reassessment in a Marlborough context was a reduction in the amount of land classified as very high risk.

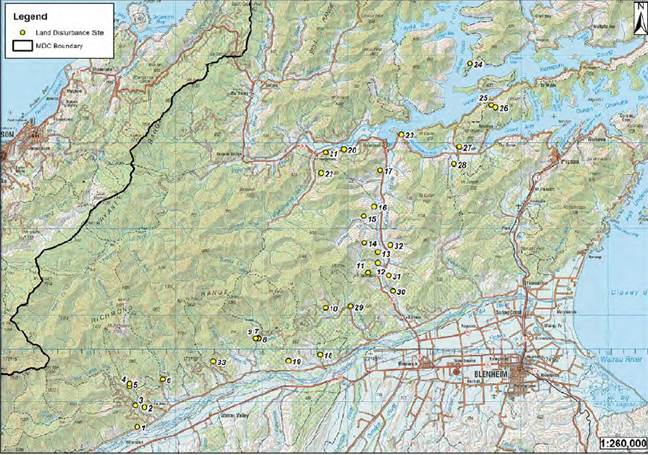
There is no material in the discussion document itself that explicitly establishes the criteria for the four bands of risk utilised. This has been unhelpful in formulating the Council submission. As the four bands of risk effectively determine the status of forestry activity, the criteria should be explicit and transparent. The original discussion document on the NES published in 2010 included such explicit criteria. The Council would welcome the provision of the criteria prior to the legal drafting of the NES.

In the absence of this information, the Council has relied upon the content of the technical publication. Geology appears to be one of the main factors influencing the outcome of the review in a local context with soils over greywacke and schist geologies not representing as significant risk as soft rocks.

The Council has reservations that the risk of afforestation and harvesting on all high risk soils can be appropriately managed via permitted activity conditions.

Except for earthworks on slopes greater than 25 degrees, the ESC treats Marlborough soils that are 7e or 8e (under the LUC system) in the same manner as soils of lesser risk of erosion. In particular, harvesting is subject to the same conditions. It is acknowledged that an Erosion and Sediment Control Plan must be prepared for harvesting on high risk soils, but there is no means for the Council to act in the event that it considers that the Plan will not adequately manage the soil erosion risk. The forester complies with the proposed condition by providing the Plan to the Council under the current proposals.

The Council has serious concerns about the effect of harvesting operations and earthworks in some of the high risk areas. To illustrate its concern, attached are documented slope failures at forestry sites during a high rainfall event in 2010. It is acknowledged that this was an extreme event and, as such, it would be unfair to say that it represented typical climatic conditions. However, the event did prompt extensive monitoring of land stability throughout the District and allowed a comprehensive assessment of slope stability to be undertaken. Figure 1 shows the forestry sites where some form of slope failure occurred. The failures all occurred on high risk sites.



**Figure 1: Record of slope failures**

In section 3.5 of the discussion document it is stated that the environmental risk assessment tools are based on local environmental and biophysical information. The Council would like to highlight that in its view the ESC is not based on the inherent erosion risk posed by forestry on Class 7e and 8e land. The Council notes that one of the concluding remarks in the technical publication is that

*“There remain a number of difficulties with applying the ESC based on potential erosion…”*

The Council notes that earthworks are proposed to be a restricted discretionary activity on high risk sites greater than 25 degrees slope. It is important that careful consideration is given to the way in which this requirement is regulated. The Council has a similar requirement within the Marlborough Sounds Resource Management Plan. There has been uncertainty with the administration of the rule in terms of the basis on which slope is measured. In terms of the proposed slope limit, the Council questions whether this rule would apply at any point over which earthworks are to occur, or apply to the average slope over a forested area. If average slope is being used, the Council has found that a rational basis for the land area to be used in calculation is essential.

Finally on this matter, there is Crown land in Marlborough that is currently utilised for forestry but is not covered by the ESC (i.e., it is undefined). The status of forestry and associated activities on this land is unclear and this situation should be rectified prior to the drafting of the regulations. The land concerned is easily identified on the tool provided on the MPI website due to the use of aerial photography.

**RECOMMENDATION:**

1. **That the criteria utilised in the ESC for the four bands of erosion risk be published on a supplementary basis as soon as possible.**
2. **That the erosion risk of Marlborough soils be reconsidered or, if this reassessment does not occur, that the Council be provided the opportunity to assess and approve Erosion and Sediment Control Plans.**
3. **That the status of forestry and associated activities on undefined land be clarified.**

### Fish Spawning Indicator

The Council strongly supports the consideration of the adverse effects of forestry and associated activities on fish spawning as part of the process of developing the NES. In doing so, it notes that other habitat values have not been considered as part of the process and can also be adversely affected by bed disturbance.

The Council is concerned that the list of 21 species that forms part of the indicator does not include species present in Marlborough rivers that are nationally threatened. This includes long fin eel, shortjaw kokopu, lamprey, torrentfish, inanga and bluegill bully. These species have the same vulnerability to sediment and turbid water as those species that are identified. It is requested that these fish species and their relevant spawning periods be added to the table. Failure to do so will treat nationally threatened fish species in an inconsistent manner.

It is noted that the spawning periods for the listed species do not necessarily reflect spawning times in a Marlborough context. The spawning can vary from year to year due to climatic and flow conditions. It is possible for spawning to occur outside of the periods stated in the rule.

The Council is concerned about standard 3 for the proposed rule. It is important that the NES explicitly identify what qualifications are required to undertake the freshwater fish survey. It is also recommended that the person undertaking the assessment is independent. These requests are made to ensure the robustness of the assessment process, given the enabling nature of Rule 1(c).

Due to a fish species being diadromous or through inappropriate fish survey methods (especially timing), bed disturbance may occur as a permitted activity resulting in the permanent change of habitat. If the rule is specific to fish spawning, then there should at least be a requirement for the survey work to occur during the spawning period.

The Council does not necessarily agree that fording should be excluded from the meaning of bed disturbance. Firstly, bed disturbance is a term used in Section 13 of the RMA 1991. If the activity is bed disturbance under Section 13 then it can only be bed disturbance (if this rule is to be retained then the activity should be exempt from the rule as opposed to the meaning of bed disturbance). Secondly, fording could have significant adverse effects on spawning habitat (and other habitat values) and should be avoided where those effects are generated. The Council has monitored the effect of ford use in specific rivers. High sediment loadings associated with heavy forestry truck movements have been evident during these monitored periods.

The Council has found it difficult to comment further on the fording exemption as “axle movements” is not defined (i.e., it has not been possible to determine the number of movements anticipated by the exemption).

**RECOMMENDATION:**

1. **That long fin eel, shortjaw kokopu, lamprey, torrentfish, inanga and bluegill bully be added to the list of relevant species to which the general rule applies.**
2. **That greater clarity is provided on the scale of fording anticipated in 2a.**
3. **That the qualifications of a “suitably qualified person” in 3 be explicitly identified.**
4. **That a requirement be introduced for the suitability qualified person in 3 to be independent.**
5. **That any survey undertaken under 3 must occur during the spawning period and at time of day that the fish is expected to be present.**

### Wilding Pine Calculator

The Council strongly supports the intent for the NES to consider the risk of wilding pine spread as part of the process of regulating afforestation. Marlborough, like most of the east coast of the South Island, is susceptible to the spread of pines from commercial plantations. The community in some areas is now making a significant investment in the control of wilding pines.

The calculator represents a good attempt to identify the factors that contribute to wilding pine spread and to provide a methodology for assessing the risk of spread.

The Council has applied the calculator to South Marlborough conditions and in many situations the outcome exceeds the threshold of 11 due to the terrain, the resulting exposure to strong NW winds and lack of grazing pressure downwind.

The calculator does involve discretion in terms of how the proposal meets the calculator criteria. The Council notes that guidance material is to be prepared and this too is supported. However, the Council remains concerned that inconsistent and/or inappropriate application of the calculator could result in land being planted in the belief that the planting is a permitted activity.

On page 26 of the discussion document, there are two references to councils applying the calculator. However, there is no requirement in the draft rules for the Council to be involved in the assessment at all. Indeed, the Council will not necessarily be aware of the planting. This could result in situations whereby the Council discovers after the fact that land has been unlawfully planted. This will be an awkward situation to manage given the investment already made and the likely lack of mitigation applied to manage the risk.

Options for managing this situation would be to either require resource consent so that the discretion can be appropriately applied through the consents process or, alternatively, require the forester to independently verify the calculator output and provide that verification to the Council. It may be necessary to specify that the person is appropriately qualified to undertake that verification.

**RECOMMENDATION:**

1. **That a requirement be introduced requiring the output from the Wilding Pine Calculator to be independently verified.**

### Applying greater stringency

Section 3.4 of the discussion document sets out a rationale for local authorities retaining the ability to manage forestry activities. This is accompanied by Table 4, which sets out six specific circumstances under which councils may impose more stringent rules. The Council supports the principle that there is a need for the Council to apply more stringent rules in certain situations and/or environments and also supports the circumstances identified in the table.

The first of these matters is the coastal marine area. The Council supports the principle that the coastal marine area often supports important values and that more stringent management may be warranted to protect these values.

The Council has recently undertaken monitoring of the status of marine habitat that is significant in a Section 6(c) context. This included extensive estuarine habitat in Hitaua Bay, Tory Channel. The catchment area of Hitaua Bay has been subject to harvesting and has resulted in the extensive deposition of fine sediment over the estuary. As a result, the estuary no longer retains ecological values of significance and it is recommended that it be removed from the register of significant sites. (For more information see Davidson Environmental Limited, July 2015).

There is no further detail provided in the discussion document on the circumstances under which local authorities will have the ability to utilise more stringent rules with respect to the coastal marine area. It would be helpful if there was greater clarity regarding this matter before any regulations are promulgated.

The Council supports the ability to apply more stringent rules to outstanding natural features and landscapes. However, the Council also has a statutory responsibility to maintain and enhance amenity values. It therefore believes it is appropriate for the matter to be extended to include landscapes that contribute to Section 7(c) matters. The status quo will potentially result in the planting of commercial forestry in areas currently considered to be inappropriate or which should at least require some form of assessment of the impact of the forestry on visual amenity.

In making this submission it is noted that both the NPS on Electricity Transmission (see Policies 7 and 8) and NES Telecommunication Facilities (see Clause 6) contain such a provision. The draft NES-PF would therefore create an inconsistency in the approach to Section 7(c) matters.

The Council is yet to give effect to the NPS Freshwater Management. The setting of cumulative limits is part of the Council’s Progressive Implementation Programme. Given the results of the Council’s state of the environment water quality monitoring, this is likely to include limits on sediment. The Council notes that there is no direct alignment between activity status of activities under the draft NES-PF and the process of determining cumulative sediment limits. For example, the status of harvesting may be permitted under the NES-PF but may potentially result in the runoff of sediment that exceeds a limit set for the water body under the NPS Freshwater Management. The Council highlights this matter as it anticipates that there will be administrative issues caused by the lack of alignment in time.

### Permitted Activity Rules

A number of the draft permitted activity conditions as worded will involve a subjective evaluation to establish whether the activity is permitted or not. For example, the riparian disturbance rule for harvesting includes the phrases “where unsafe or impractical to do so” and “where slash removal is necessary”. There are other similar phrases used in other permitted activity conditions. The Council does not believe that it is appropriate to use language that requires judgements to be made as a condition of a permitted activity. This may have the consequence of creating tension between foresters and councils when the outcome of each party’s evaluation is different. The conditions should be redrafted to provide greater certainty for both the forester and for the council monitoring compliance with the condition.

The submission has already highlighted an issue created by requirements to provide the Council with information and the inability for the Council to respond to this information (as the means of compliance is the provision of the information). These issues could be overcome by also stipulating in the conditions that the documents must be approved by the Council. However, a council exercising discretion over the documents provided may also raise further legal issues. If this is the case, but it is considered appropriate for the Council to approve management plans (and the Council believes that this is appropriate in the case of the Erosion and Sediment Control Plans), consideration could be given to controlled activity status.

Some of the rules in the NES-PF will inevitably create permitted baselines in terms of other rural land uses. Of particular concern in this respect is quarrying and bed disturbance caused by fording because these activities are undertaken by other rural resource users. The NES-PF may unintentionally act to undermine the management of these activities prescribed in rules. In this regard, the Council has put considerable effort into the management of the adverse effects of river crossings in the rural environment, especially in dairy catchments. It would be unfortunate for that work to be undermined by permitted baseline arguments.

Councils are unable to charge for monitoring of compliance with permitted activity conditions. The Council notes that by making forestry more permissive through the application of particularly the ESC, the monitoring of compliance with conditions of permitted activity will now fall on the ratepayer. This would seem an unfair outcome when it is the activities of the forestry industry that are being monitored.

**RECOMMENDATION:**

1. **That draft permitted activity conditions that involve evaluative judgements be reviewed in an effort to provide greater certainty.**
2. **Subject to other recommendations, that consideration be given to the use of controlled activity status in order to allow for the approval of at least Erosion and Sediment Control Plans.**

### Transportation

A number of current resource consents for forestry in the Marlborough Sounds impose conditions requiring transportation of harvested logs by means other than road or otherwise limit the number of road movements. By way of background, the roading infrastructure in the Marlborough Sounds is typified by winding roads which are a mixture sealed and unsealed roads. The conditions have been imposed to protect the roading infrastructure and users of that infrastructure. The NES-PF does not consider those effects. On expiry of the consent, there will be no constraint on the method of log transportation. The Council anticipates that this will cause the potential for conflict with local communities.

### Concluding Remarks

As stated at the outset, the Council does not believe that the NES-PF represents an efficient or effective response to “unwarranted variation” in the regulation of forestry activities. It has also highlighted practical and other concerns with respect to the three environmental risk assessment tools. Of particular concern is the effect of the amended ESC. The Council does not believe that this fairly or accurately represents the erosion risk presented by some soils in a Marlborough context and has concerns regarding the ability of the potential adverse effects of forestry activities on these soils to be managed via permitted activity conditions.

In addition to the specific matters raised in this submission, the Council is also aware that other councils have expressed similar concerns. It is recommended that representatives of local government be included in the process of reviewing the feedback received on the draft NES-PF. In this way, perhaps the concerns expressed by the sector can be reflected in changes to the document.

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