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Dear Stuart

**NELSON CITY COUNCIL SUBMISSION ON A NATIONAL ENVIRONMENTAL
STANDARD FOR PRODUCTION FORESTRY**

Nelson City Council appreciates the opportunity to comment on the consultation document of A National Environment Standard for Plantation Forestry (NES-PF). Nelson City Council supports the submission made by Local Government New Zealand.

1. Overview

In general, while Nelson City Council appreciates and supports the effort that has gone into developing an NES for plantation forestry and the improvements since the last iteration; this submission is largely in opposition to the proposed permitted activity standards and does not support the draft in its current form.

Nelson City Council is currently embarking on the development of an integrated second generation RMA plan review. The Nelson Plan aims to manage natural resources in an integrated and sustainable manner to maintain and enhance natural, ecological, recreational and cultural values. It is submitted that the NES-PF in its current form does not assist Council with meeting these objectives and may hinder its ability to manage the adverse effects from forestry related activities. Council requires the ability to be more stringent than allowed for in the NES-PF.

While the NES-PF tries to introduce a level of national consistency in relation to the plantation forestry sector, it does so in a way which starts from a premise that all activities should be permitted where the effects are largely unknown and introduce judgement and uncertainty. Language used such as "as far as is practicable", "if unavoidable", "except where unsafe or impracticable to do so" results in conditions that are litigious or unenforceable. This is at variance with the RMA and effects based planning. It is questionable therefore whether the

proposed permitted activity standard conditions are *vires* as they provide inadequate certainty or clarity.

The NES proposal explains further analysis and drafting is envisaged and the rules as they are amount to drafting instructions. There is no obvious clear and certain language for many of the rules that would suitably manage adverse effects across all circumstances. Therefore it is important that if the permitted activity status is retained for these activities, the relevant conditions err on the side of caution, alternatively a consents regime should be required.

The proposed NES is likely to result in higher costs for both the plantation forest industry and the Council in terms of permitted activity monitoring and enforcement with little clear additional benefit.

2. Overall Issues with Draft Rules

The proposed permitted activity rules where they are uncertain or unclear result in risks to the environment, or result in costly new processes and monitoring for councils. In particular Nelson City Council has concerns with the following:

- a) Frequent use of uncertain language such as "as far as is practicable", "if unavoidable", "except where unsafe or impracticable to do so" is all too uncertain and unclear to enable effective monitoring and compliance by councils.
- b) Third party approvals or processes for permitted activities (e.g. minimum afforestation distances from adjoining properties and dwellings, Heritage NZ).
- c) The requirements for provision of earthworks, harvesting and quarry management plans do not specify the required content or standards that must be met, nor are they able to be declined or improved by councils if deficient. These plans should all be provided to councils without the need to request them.
- d) Requirements for auditing result in increased workloads and costs for the Council. Costs for managing this information are not recoverable for permitted activities.
- e) Further definition and explanation for the majority of the terms used, such as "urban area" is required.
- f) It is unclear what process councils are to follow where more stringent rules are required in addition to the NES-PF rules. For example to maintain and enhance waterbodies as required under the NPS for Freshwater Management (NPS-FM).

3. Ability to be More Stringent

The listed NES-PF activities covered by the rules encompass all major works within forest activities. The ability for councils to be more stringent is tightly

constrained. To properly apply sustainable management and give effect to our statutory responsibility Council requires the ability to be more stringent than allowed for in the NES-PF.

Mapping areas of significance is expensive, takes considerable time to collect and collate the required data, and may not be the best planning management option. Council is currently considering its options in terms of mapping SNAs in the new Nelson Plan. Currently there are approximately 40 sites mapped in the operative plan, and at least another 120 have been identified as worthy of inclusion. It is submitted that good outcomes for these areas can be achieved through setting out key parameters and using site specific assessments. The inability of Council to protect SNAs that are not mapped in the plan means that the NES-PF has adverse implications for meeting section 6(c) RMA requirements.

Relief sought: Unmapped wahi tapu sites, unmapped significant indigenous flora and fauna, SNAs, other than outstanding but still significant freshwater bodies and natural features and landscapes (as well as sensitive receiving environments as below) all be included as matters where councils can apply more stringent rules.

4. Sensitive Receiving Environments

The fish spawning indicator enables controls to be targeted so restrictions on activities only occur where required to protect instream fish habitat. However, the NES-PF does not fully recognise the potential catchment scale flow on effects to sensitive habitats (e.g. lower catchment waterways and estuaries), and provides no incentives to harvest in a more sustainable manner (e.g. harvest smaller areas) to reduce wide-scale slope erosion and sediment discharges during intense rainfall events.

Relief sought: Inclusion of sensitive receiving environments such as estuaries, coastal marine areas, water intakes, sites of significance, dwellings and amenity features into the matters where councils can apply more stringent rules.

5. Orange Zone - Harvesting and Afforestation

Harvesting on all of the Orange Zone Erosion Susceptibility Class (ESC) is a permitted activity. This is opposed for the Nelson Region. Orange zoned land includes a number of Land Use Capability (LUC) units that are steep to very steep erosion prone land. The NES permitted activity conditions are inadequate and rigid. It is unacceptable that such land is afforded permitted activity status given the risks involved. Section 43 A (3) (b) RMA 1991 does not allow an NES to state that an activity is a permitted activity if it has significant adverse effects on the environment. This is such an activity.

Relief sought: Controlled or restricted discretionary status for harvesting on steep to very steep erosion prone LUC units of Orange Zone ESC.

Linked to Orange ESC harvesting issues is afforestation (of new forests) which is a permitted activity in this zone. This would prevent councils from applying planting restrictions as a method to mitigate woody debris from future harvesting.

Relief sought: Apply restricted discretionary status for afforestation on steep to very steep erosion prone LUC units of Orange Zone ESC.

6. Earthworks

The timing of earthworks and activity within riverbeds is a significant issue both in terms of generation of sediment and avoidance of impacts on aquatic ecosystems and birdlife. No provision for an earthworks "close out" season is provided for in order to protect the values of sensitive receiving environments including outstanding waterbodies and wetlands.

Relief sought: Councils have the ability to be more stringent around the timing of earthworks and activities adjacent to and within the bed of a river or lake in all zones where this is required to protect sensitive receiving environments and to achieve limits set under the NPS-FM process.

As Council develops its second generation plan it is considering introducing constraints on the area of clearcuts and roading density. The NES-PF does not include any restriction on or set thresholds for these activities in any of the erosion susceptibility classes.

Relief sought: Define and incorporate thresholds in the NES-PF to allow councils to control the size and timing of forestry activities such as earthworks and harvesting as a means of mitigating risk in all erosion susceptibility zones.

7. Management Plans

Harvest Plans, Quarry Management Plans, and Erosion and Sediment Control Plans are required to be prepared for harvesting, quarrying and earthworks respectively. The contents required of these plans is broadly described and it is uncertain whether the plans will adequately describe activities or if the activities intended will be sufficient to achieve other permitted activity conditions.

The role of councils is restricted to being advised when activities will begin and having the Plans made available to them. There is no provision for councils (or any other body) to certify the Plans as adequate. This becomes an issue for the smaller woodlots where planning and management practices may be currently lacking.

Relief Sought: During the legal drafting phase, the content of management plans should be made clear and linked to clear outcomes. Provision should also be made for Council certification to ensure they adequately meet requirements.

8. NPS for Freshwater Management (NPS-FM)

Many of the proposed rules in the Draft NES-PF do not provide for the NPS-FM Objectives 1 and 2, and the requirement for the Council to maintain and improve water quality. While the NES-PF provides councils with the “ability to be more stringent where required to meet the Objectives of the NPS-FM”, the discussion document identifies this as only where a limit has been set that has not been met, and forestry activities are the source of the contaminant.

It is submitted that although the NES-PF allows for councils to impose stricter regulations, this is likely to lead to increased litigation where forestry operators consider that local authorities are trying to impose improper forestry controls for reasons associated with the NPS-FM.

In the table on page 99 which lists matters where councils can apply more stringent rules, this only specifies this can be done in relation to Outstanding Freshwater Bodies and does not refer to meeting NPS-FM limits as discussed in section 6. Under the NPS-FM the threshold to include freshwater bodies as ‘outstanding’ is very high and has to be exceptional in some way. Only a small number have been identified by MFE across New Zealand. Under this definition, Nelson has no outstanding freshwater bodies, but it does have several waterbodies which must be maintained and enhanced. This does not provide for councils to meet their requirements under the NPS-FM.

Relief sought: Provide a more detailed description of local authorities’ ability to impose more stringent requirements in relation to implementing the NPS-FM. Further include the ability for councils to be more stringent in relation to all water quality limits set in order to maintain and improve water quality as required by the NPS-FM. Ensure that this ability to be stricter to meet NPS-FM objectives and limits is included in the rules and in the table on page 99 under ‘Matters where councils can apply more stringent rules’.

The NPS-FM specifically requires the protection of the significant values of wetlands. The discussion document does not specifically identify wetlands and their riparian areas as being a matter over which councils can be more stringent. All of the forestry activities identified within the rule tables have the ability to affect the significant values of wetlands. For example, in relation to setbacks, the NES-PF rule tables reference wetlands only greater than 2500m². In many instances the setbacks proposed may be insufficient to protect a wetland’s significant values – for example by altering the water table.

Relief sought: The rules in relation to wetlands are deleted in their entirety and councils retain the ability to be more stringent around the management of wetlands and their riparian areas across all activities.

9. Setbacks and Riparian Buffers

The conditions for earthworks and afforestation require setbacks of 5 metres for streams less than 3 metres in width and 10m for those greater than 3 metres. A riparian buffer width of less than 10 metres will not maintain all of the ecological functions that support healthy freshwater ecosystem processes, such as efficient plant nutrient uptake. Some riparian functions can be maintained or enhanced with riparian widths less than 5 metres either side of the stream, whereas others may require widths of greater than 15 metres (Parkyn *et al.* 2000).

Relief sought: Review information on riparian buffer widths necessary to support sustainable vegetation and meet aquatic functions.

The Harvesting rule allows for the felling of trees directly across waterbodies where unavoidable and for harvesting within and across riparian zones. As discussed above riparian zones are required to support healthy freshwater ecosystems and no felling into or across these zones should be permitted as of right.

Relief sought: Delete references to allow the felling and harvesting within riparian zones in the rules and allow councils the full ability to put in place appropriate rules for activities which could affect these riparian areas.

10. Environmental Risk Assessment Tools

There are issues with the reliability and implementation of the three environmental risk assessment tools as all involve judgement and interpretation. As discussed above, it is questionable whether such performance standards are *vires*.

Council has the following comments:

- ***Erosion Susceptibility Classification***

The ESC classification is based on LUC which is then used to determine activity status. Council has some concerns over the use of the ESC classification in the Nelson Region and the significant variation between the original maps produced in 2011 to the proposed version in 2015. This has resulted in most of Nelson's forestry areas downgraded from high to medium and low susceptibility. This has significant implications especially in catchments such as the Maitai, where forestry is seen to be having a large impact on instream water quality and river health.

Resource consent in the three lower ESC zones is only triggered by non-compliance with the Permitted Conditions. Therefore by implication, emphasis is on remedying adverse effects with little emphasis on avoiding adverse effects. This may not sufficiently protect environmental values as required under the RMA or NPS-FM.

This ESC classification currently takes no account of variations in downstream receiving environments which demand site specific measures to avoid or mitigate adverse effects. Where the activity status includes a resource consent requirement this imparts the flexibility to provide for differing receiving environments and this is supported. However, where permitted activity status applies, supported by generic permitted activity conditions only without allowance for variations in downstream receiving environments, this is opposed. It also breaches Section 43A (3) (b) RMA.

Relief sought: Inclusion of sensitive receiving environments such as estuaries, coastal marine areas, water intakes, dwellings and amenity features into the matters where councils can apply more stringent rules. It is noted that in the earlier Plantation Forestry NES proposal this included an exception for sensitive receiving environments.

Under several rules, for example earthworks, these activities are a restricted discretionary activity for land in the Orange Zone with a slope of greater than 25 degrees. It is unclear how this rule will be enforced and who is responsible for determining these areas.

Relief sought: Clarify who is responsible for defining land in the Orange Zone that has a slope that is over 25 degrees. The Council considers that this should be undertaken by MPI and provided to councils to allow for planning and management of those areas.

- ***Fish Spawning Indicator***

There appears to be no specific reference to the fish spawning indicator in the draft rules. Fish spawning is addressed as part of the general conditions that apply to all forestry activities, but neither the condition nor accompanying explanatory content refer expressly to the indicator or how it is to be used to evaluate compliance.

Relief sought: Amend rules and related conditions to specifically include reference to the fish spawning indicator.

Fish species: There are significant issues with the fish spawning indicator. The information used in the calculator is based on old research and outdated records dating back to 1915. The indicator only includes a limited number of species, and fails to include many endangered and at risk species across New Zealand.

Relief sought: Amend list to include: long finned eel, short finned eel, short jawed kokopu, torrentfish, Crans bully, bluegill bully, upland bully, giant bully, inanga, banded kokopu, lamprey and smelt.

Spawning: The General Conditions list periods of time where beds of rivers cannot be disturbed in order to protect the spawning of fish species. These times do not however align with local spawning dates for those species. Fish spawn at different times in the Nelson region which renders some of these dates ineffective.

Relief sought: Allow councils to identify the local spawning times for fish species in their region through their regional plans.

Non migratory fish species: The General Conditions do not provide for native non migratory fish species. For many non migratory fish species, such as Dwarf galaxias, that spend all their adult life in one location, adverse impacts from forestry related activities present a significant risk to the adult, its habitat, and lifecycle. This similarly applies to some migratory species as well; such as kokopu and koaro that migrate out to the sea for a short period as juveniles, but which spend most of their lives in rivers and streams. Protection should be extended to their adult habitat (and the habitat of their invertebrate food sources, i.e. rivers and streams), as well as their spawning habitat.

Relief sought: Allow councils to identify sites of significance for non migratory and migratory native fish in their regions and apply more stringent regulations in relation to activities in the beds of rivers to protect both adult and fish spawning habitat and lifecycles.

Fish migration: The General Conditions do not provide for native fish migration. In the case of species such as long finned eel, barriers to downstream migration can result in the death of the eels as they have undergone physiological change in order to undertake migration and no longer feed.

Relief sought: Allow councils to identify important migration periods for native fish in their regions and be more stringent in relation to activities in the beds of rivers during these periods.

Water temperature: The review of harvesting effects on fish spawning and habitat provides a useful summary, but does not fully take account of the significant increase in river water temperatures that occur when riparian margins are removed as part of the harvest. Increase in stream water temperature post harvest can have long term negative effects on freshwater invertebrate communities and fish spawning, which is well documented in NZ.

Relief sought: Allow councils to identify sites of significance for native fish in their regions and be more stringent in relation to riparian margin setbacks and activities in the beds of rivers during these periods.

Nesting sites: The General Conditions provide for protection of nesting sites from disturbance for Nationally Critical or Nationally Endangered

species. This does not provide for regionally threatened species or stronghold populations.

Relief sought: Councils are able to be more stringent where they have identified regionally threatened species or stronghold populations.

11. General Conditions

Fuel: The current permitted activity rule allows refuelling of machinery adjacent to surface water provided this does not occur within the waterbody. To reduce the risk from any accidental spills, a minimum distance for refuelling should be specified.

Relief sought: Require that all machinery on the work site shall be refuelled at least 20 metres away from any open watercourse. If spillage of any contaminants into any watercourse or onto land occurs, this shall be adequately cleaned up so that no residual potential for contamination of land and surface water runoff from the site occurs. If a spill of more than 20 litres of fuel or other hazardous substances occurs, the Council shall be immediately informed.

Vegetation Clearance and Disturbance: The permitted activity rule allows indigenous vegetation of existing tracks within SNAs to be damaged or removed. This may be at odds with Council's aim to maintain and enhance these areas, including old roads or tracks. Currently there is no age restriction or other qualification for these areas and arguably also allows old bridle and walking paths to be damaged for forestry purposes.

The rule also allows incidental damage to riparian and indigenous vegetation provided it will readily recover within five years. As discussed above, these performance standards are subjective and open to interpretation. Who will determine if the vegetation can recover within five years, and what happens if it does not – what comeback is there for councils or adjacent landowners?

Relief sought: Delete the last three bullet points of this performance standard. Consent should be required to damage or remove any indigenous vegetation within an SNA. Directional felling and adoption of appropriate harvesting techniques should also be implemented to avoid incidental vegetation damage. If it is determined that this cannot be achieved, consent should be required as a controlled or restricted discretionary activity.

Introduction of weed species from soil residues on heavy machinery:

Undesirable weed seed can be transported between areas on the tracks and tyre treads of skidders, haulers and diggers as these are uplifted from one site to another by trailer. Unlike logging truck movements that have greater potential to lose contaminated soil from tyre treads en-route to the next site, heavy logging machinery can potentially introduce new weed species from another district directly from stuck on, seed infested mud/soil.

Relief sought: Consideration should be given to the mandatory water blasting of machinery between sites. This should particularly apply if the next site is

relatively weed free or in cases where a forest is being retired from plantation forestry.

12.Administrative and Monitoring Costs

Nelson City Council considers that the provisions for permitted activities along with the monitoring and reporting requirements will lead to significant increased costs. The shift in focus to permitting activities for the forestry sector results in a shift of administrative and monitoring costs to the wider ratepaying community.

The need for amendments and alignment with council plans will require considerable administrative effort to align concepts and activity specifications in the Council Plan with the NES-PF.

Resource consent processes involve pre-application discussions, requiring further information and formulating clear activity based conditions that will lead to required environmental outcomes. These are proactive processes by which forestry activities are able to be shaped before they begin. Forestry activities such as earthworks, quarrying and harvesting are irreversible and are often large in scale and happen very quickly.

Where activities are permitted they are able to proceed without council approval. How the activities are carried out is unable to be influenced. Council involvement is limited to compliance monitoring and enforcement. These are reactive in nature, occurring after activities have occurred.

Relief sought: Councils are provided with the ability to charge forestry operators to monitor permitted activities; or councils are provided central government funding to fulfil the monitoring requirements.

Council supports the proposed review of the NES-PF after five years given its wide reaching impact on council rules and potential for significant adverse environmental effects.

Thank you for the opportunity to comment on this document. I would be pleased to make Council officers available to further explain these submission points and work with MPI staff towards solutions.

Yours sincerely



Clare Hadley
Chief Executive