

18 November 2022

Ministry for Primary Industries  
**Wellington**

**Re: Consultation on national direction for plantation and exotic carbon afforestation**

**1. Introduction**

- 1.1. The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the National direction for plantation and exotic carbon afforestation discussion paper (the **discussion paper**).
- 1.2. This submission has been prepared with input from the Law Society's Environmental Law Committee.<sup>1</sup> Our comments are limited to potential issues we have identified with the workability of this proposal, rather than the merits of the policy.

**2. Part B: Controlling the location of plantation and exotic carbon afforestation**

- 2.1. This part proposes two options for controlling the location of new plantation and exotic carbon forests:

Option one: Amending the National Environmental Standards for Plantation Forestry (**NES-PF**) to allow local councils to make rules in district or regional plans; or

Option two: Developing a national consenting framework under the Resource Management Act (either by amending the NES-PF or developing a new national environmental standard) or under the proposed new resource management legislation.

The discussion paper does not express a preference between these two options; rather, it sets out the pros and cons of each.

- 2.2. One of the identified benefits in favour of option one is that it would allow local councils to have greater control to manage the social, cultural, and economic effects of afforestation, with decisions able to reflect local circumstances and priorities.
- 2.3. While having a system that is designed and able to take into account local circumstances is commendable, in the Law Society's view it can be difficult at times to obtain reliable information on the social and economic impacts of land-use proposals. Social impact analyses require significant resources, and at times do not produce a firm or definitive conclusion due to uncertainties inherent in any such analysis. Similarly, while economic analyses often come to firm conclusions, these are almost invariably contestable due to

---

<sup>1</sup> More information regarding this Committee is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/environmental-law-committee/>.

differences in the methodologies or underlying assumptions used. Given this, option one has the potential for local councils to incur significant costs while still being subject to litigation on any decisions made, disincentivising those councils from using the option.

- 2.4. However, we also agree that a national-level approach raises implementation issues, particularly an inability to identify the social, cultural, and economic effects in all except the largest proposals and consequent problems managing cumulative effects. It is also not clear what evidence a national-level approach would rely on.
- 2.5. It follows, in the Law Society's view, that both options are problematic, and that it is questionable whether either is likely to achieve the objective in practice.

### **3. Part D: Enabling foresters and councils to better manage the environmental effects of forestry**

- 3.1. Part D sets out a number of proposed amendments to the NES-PF regulations that control the management of forestry activities. The current regulations require that measures are taken to ensure that slash is not mobilised in rain that is 5% AEP or greater, though it does not specifically cover slash left on the cutover, which is seen as a risk area. The discussion paper suggests amending the regulations to clarify that slash on the cutover is also required to be managed to ensure it is not mobilised in heavy rainfall (issue D1e).
- 3.2. The Law Society has no difficulties with this proposal, but suggests consideration be given to specifying this rainfall limit in mm/hour over a specified period, rather than AEP. Determining AEP depends on expert statistical analysis and has the potential to vary depending on what statistical method is adopted. In comparison, specifying a mm/hour trigger point provides greater certainty. Alternatively, if an AEP trigger point is to be maintained, the regulations could require that Councils specify what the 5% AEP rate is in their region (or in different parts of their region where there are regional variations) to provide greater certainty in its application.
- 3.3. The discussion paper proposes changes focussed on the management of river crossings and maintaining fish passages, to make the NES-PF consistent with the National Policy Statement on Freshwater Management (**NPS-FM**) and the National Environmental Standards for Freshwater (**NES-F**) (issues D2a and b). Issue D2a proposes to amend the NES-PF permitted activity standards so that river crossings do not need to provide for upstream and downstream passage of fish where the regional council has determined that fish passage must be restricted. The reasoning for this is that the NPS-FM requires councils to change their plans to identify undesirable fish species whose passage can or should be prevented, and rivers where their fish passage should be impeded. In relation to these proposals, the Law Society notes that the NES-PF permitted activity standards will change depending on yet-to-be-introduced regional plan policies, which creates a level of uncertainty. The Law Society also notes that the NES-F standards only apply to new structures that impact on fish passage, whereas the proposed permitted activity standard would apply to both new and existing structure, which creates an inconsistency between the two standards.
- 3.4. The discussion paper also recommends amending the NES-PF to make it consistent with the NES-F in regard to the use of vehicles in wetlands or the setback from wetlands (issue D4a).

The Ministry for the Environment recently consulted on proposed changes to the NES-F focussed on the definition of 'natural wetland'. The Law Society suggests that any changes to this aspect of the NES-PF should be carried out in conjunction with any imminent changes to the NES-F, to ensure the terms are consistently used.

**4. Next steps**

- 4.1. We would be happy to discuss this feedback further, if that would be helpful. Please feel free to contact me via the Law Society's Law Reform & Advocacy Advisor, Dan Moore ([Dan.Moore@lawsociety.org.nz](mailto:Dan.Moore@lawsociety.org.nz)).

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Taryn Gudmanz', with a long horizontal flourish extending to the right.

Taryn Gudmanz  
**Vice-President**