

26 April 2002

Matthew Everett
Ministry for the Environment
P O Box 10362
Wellington

Dear Matthew

February Draft of National Policy Statement on Indigenous Biodiversity

Thank you for giving New Zealand Forest Owners' Association the opportunity to comment on the latest draft working of the Biodiversity NPS. We have left our comments in brief form as they simply supplement the discussion we had at the meeting on 9 April.

The main points we would like to reiterate are as follows:

- i We strongly support the way the NPS is establishing criteria to determine significance. We believe this will give a good level of direction to all decision makers about where to focus their efforts and will result in improvements to national biodiversity. The type of criteria proposed meets the ubiquitous certainty test that industry is always calling for.
- ii We believe a stronger level of direction should be given to territorial local authorities regarding:
 - (a) the need to focus on vegetation which meets the national significance criteria;
 - (b) methods that are advisable (via the s.32 analysis);
 - (c) reporting requirements; and so on..We realise that there is uncertainty at present about how much procedural direction can be given through the NPS. However, this does not affect our comments re (a) and (b).
- iii. We believe it is necessary to focus on those areas of indigenous vegetation which meet the criteria of national significance in the NPS so that we do not dilute our efforts and take on too much at once. The costs involved in protecting "type A" vegetation is huge and should not be under-estimated by communities. It may well be possible to start considering "type B" vegetation at some point in the

future, but taking a staged approach to enhancing biodiversity will result in greater gains over time.

- iv As the community benefits from biodiversity protection, it is important that it is the community that pays for this protection. As discussed at the meeting, to do otherwise is to penalise those landowners who have been good stewards and retained areas of indigenous vegetation.
- v We are pleased to see that non-regulatory methods are given air-time in the document as councils to date have tended to focus on regulation and plan development rather than on the wide range of tools they have at their disposal.
- vi In this regard, we do not consider regulation should be required as a trigger to determine if vegetation is significant in a district/region. The whole point of providing criteria in the NPS is to avoid the need for a consent process each time to determine significance. Landowners should be able to determine for themselves whether the vegetation they have on their property meets the criteria – they do not need to go through a consent process for the council to decide this for them as this is costly and cumbersome.

Comments about specific provisions of the draft NPS are as follows:

Principles

We are very supportive of setting out underlying principles which guide decision makers. At present, the Principles mix s.6 RMA considerations with process issues. We do not think this is helpful for decision makers. We take on board the possibility that directing councils' consultation and other process issues may be ultra vires. If the reference group considers it important to include this issue, this can be provided by way of good practice guideline or by including Principles in two categories – one relating to ecological issues and the other to processes.

Principles 11-14 are obviously quite similar. Our preference is for Principle 14 to be retained on the basis that it gives the most direction about what steps in production landscapes and urban areas will best enhance biodiversity.

We do not consider it is appropriate to refer to the precautionary approach in Principle 15 given that other objectives refer to sustainable use and recognise that development must be allowed to continue in production landscapes. We therefore prefer the wording of Principle 16.

Principle 17 refers to “certainty of outcome”. In “RMA speak”, this has often been taken to mean “rules”. As this is not (exclusively) what is intended as the outcome from the NPS, we suggest that the final sentence is changed to read “The package of methods must be geared towards achieving **an (significant) increase in biodiversity protection**” or words to like effect.

6.3 Policies

As we stated at the meeting, we are extremely supportive of the NPS setting out criteria with which to determine significance. Comments about specific criterion are as follows:

- a) We are uncertain as to what constitutes “naturally uncommon” and would therefore prefer that the policy referred to rare, threatened or endangered. This has the advantage that fauna that fits this definition is already defined by DOC.
- c) We do not consider that an Ecological District approach is the best approach. We had certainly assumed that any reference to subdivisions of the landscape would be to Environmental Domains and the work that is currently being completed by Landcare.

We also strongly consider that ecosystems types should be identified as being significant on a national basis. We would be extremely concerned if territorial authorities retained an ability to add their own list of areas that are significant in a district. Our concern stems from our experience to date which gives us no confidence that territorial authorities will not misuse that ability to regulate landowners on spurious ecological grounds. It is important that, as we talked about at the meeting, efforts to protect areas listed in Policy 6.3.2 are not diluted by landowners and others in the community spreading their resources too thin. In addition, landowners must be given the room to use the rest of their productive land so that they can generate the income needed to undertake biodiversity protection work..

- d&h) The upshot of this is that, if an area is rare at a district level but common nationally, it should be afforded (the same level of) protection as those areas listed in Policy 6.3.2.
- f) As we commented on at the meeting, it appears strange that all aquatic habitat is afforded the same level of significance as the terrestrial species and habitat in other criterion. We understand this will change as a result of the NIWA review and withhold comment on that basis.

7.1 Issue

We assume that the reference to “special” indigenous biodiversity values in the first line is a catch-all term for 6.3.2 areas and those significant to Maori as identified in 6.3.1(b). Consistency of terms would be really useful to avoid people putting their own interpretation on what is special etc.

7.3.3 Policy

Perhaps we are being pedantic, but we are unclear whether the second sentence means that we should restore significant areas first then link them, OR restore ‘significant’ areas and then others (i.e. the B list).

7.3.6 Policy

We would like to see the role of pest control given more status as it is arguably the single most important action that landowners can take to restore existing indigenous vegetation.

8.3.4 Policy

The Policy refers to Maori being involved in management of biodiversity in all areas of indigenous vegetation, not just areas identified in 6.3.1. We question whether this is appropriate or, as is our preference, the Policy is deleted and the issue covered in 8.3.5.

8.3.6 Policy

We gather that policy will be amended as a result of the NIWA review. At present, the policy is not sensible as almost all waterways support aquatic habitat. There would therefore be no direct discharges.

9.3.6 Policy

We do not support the inclusion of the precautionary principle in Policy 9.3.6. The RMA provides sufficient provision in the definition of “effects” and in section 5(2)(b) and (c) to cover the issue alluded to in the policy. Under section 3 alone, territorial local authorities can deal with future, low probability, potential and cumulative effects – that is, councils area able to take a precautionary approach using the definition established within the Resource Management Act.

It is difficult to envisage an effect that is not provided for in the definition of “effect” that is captured instead by the “precautionary approach”. The only advantage we can see in using the term is the unrealistic perception that such an approach will provide a greater level of protection than is already available under the Resource Management Act. This is not the case.

9.3.7 Policy

As we have already discussed, we would be concerned if “B list” vegetation was given too much focus. Landowners need to see a quid pro quo if they are expected to protect areas of significant vegetation on their properties. They also need to understand the urgency surrounding what is deemed ‘significant’. This will be lost if too broad a brush approach is taken.

Protecting all areas of indigenous vegetation would also prevent development on a lot of Maori owned land and on uneconomic farming units which would have major social impacts, particularly in some parts of the country.

10.3.1 Policy

Again, **all** aquatic ecosystems?

10.3.5 Policy

This policy should relate only to wetlands in a natural state and not those that have been grazed, burnt and so on so.

11.3 Policies

As we alluded to in the meeting, there are currently a number of potential fish hooks in 11.3. The most significant from our point of view is that we are not clear how harvesting of indigenous tree species under the Forests Act fits in. We would obviously contend that the NPS should not cut across this Act. If it is felt that particular provisions of the Forest Act need to be changed to support what is being promoted through the NPS, this should be undertaken as a separate exercise. In general though, we would contend that the Forest Act is designed to support sustainable harvest of indigenous vegetation and is unlikely to need amending.

The other example we used at the meeting was that, if replanting indigenous plantations is a consent conditions (as it often is for soil stability reasons), landowners would not be able to harvest the next rotation. This is obviously not what was intended.

We do support the underlying concept of the policy that landowners should be able to clear etc new areas of indigenous vegetation unless they have been compensated for establishing it, it has legal protection and so on.

General

In the background material, the public would benefit from understanding more about what work has gone on to date to build up knowledge about indigenous flora and fauna, e.g. Ecological Districts/Environmental Domains if these are referred to.

If you wish to discuss any of the comments in this letter please contact Katie Mayes in the first instance (telephone 09 6222080, email katiem@ernslaw.co.nz).

We look forward to the Association's continuing involvement in the development of the Biodiversity NPS.

Yours sincerely

Rob McLagan

c.c. Carolyn Thomas-Lewis, Farm Forestry Association
Ken Stephens, President, Farm Forestry Association