PROFITING FROM BIODIVERSITY: REDUCING THE IMPEDIMENTS TO PLANTING NATIVE TREES

THE PROCEEDINGS OF TWO SEMINARS

HELD ON MAY 16TH AND MAY 20TH 2003

AT

THE ACADEMY OF PERFORMING ARTS,
UNIVERSITY OF WAIKATO, HAMILTON

AND

MINISTRY OF ECONOMIC DEVELOPMENT
BOWEN STREET, WELLINGTON

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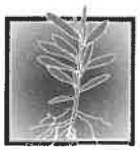


Tāne's Tree Trust
Native Trees for the Future

WHY IS TANE'S TREE TRUST INVOLVED IN THIS ISSUE?

Ian Barton

Chairman, Tãne's Tree Trust

1. BACKGROUND

In October 1999, a conference called "Native Trees for the Future" was held at the University of Waikato. The meeting highlighted the need to establish an organization to further the work of planting indigenous timber trees.

Early in 2001 a steering committee was formed to do this. The group included people from many backgrounds including scientists, farm foresters, farmers, nursery operators, foresters, civil servants & local government staff. From this steering committee the Trust was formed.

With Tãne's Tree Trust we have for the first time an organization with two major strengths. First there is a single focus -the growing of native trees; but more particularly the growing of native trees to re-establish new forests for the future. Secondly the Trust and its network is comprised of people with a very wide range of scientific, forestry and farming skills.

2. THE TRUST

2.1 VISION

To see the majority of New Zealand landowners successfully planting and sustainably managing indigenous trees for multiple uses by 2020.

2.2 OBJECTIVES

1. Consolidating and advancing the state of knowledge of an increasing range of indigenous tree species - their establishment, growth, and productive use;
2. Maximising the economic incentives for establishing indigenous trees by reducing establishment costs;
3. Resolving legal and political obstacles currently serving as disincentives to the planting of indigenous trees;
4. Building a network of knowledge-sharing amongst stakeholders.

2.3 EARLY ACTIVITIES

The Trust was launched in September 2001 and is active in several areas including: -

- ➢ Producing newsletters and operating a web site.
- ➢ The raising of funds for research and information transfer.
- ➢ Setting up establishment trials covering a range of site preparation methods, irrigation and the use of nurse plants. Such trials have the double function of determining and refining establishment techniques and providing demonstration areas.
- ➢ Locating, analysing and writing up early experimental work done by Forest Service officers and others between 1920 and 1987.
- ➢ Examining the procedures required for the successful establishment of indigenous forests on farms.
- ➢ And finally to run seminars on legal and taxation issues. This activity, which we are involved in today is vital -for we cannot achieve the objectives of having people plant native trees for production unless we create the appropriate legal and economic framework. We are setting out to identify the issues involved. I do not think the task will be easy and these seminars are

likely to provide more questions than answers. However they are a start and from them will come publications on the issues involved and the information needed to lobby Government for the changes needed to provide a "level playing field" for those who wish to grow natives.

3. DRIVING ISSUES

There are several reasons why New Zealand should consider growing indigenous trees. They relate to both timber supply and environmental enhancement.

3.1 NEGATIVE REASONS

- Early assessments indicated that we could not grow indigenous species for timber however these were largely assumptions based on existing perceptions and not scientifically based.
- The threat to our forests from outside the country.

3.2 POSITIVE REASONS

- Most New Zealand species produce high quality timber
- Indigenous forests are very efficient at carbon sequestration
- Planting native forests will increase biodiversity
- Planting native forests will enhance the landscape
- Improved soil and water values, especially from riparian planting

New Zealanders have virtually ignored the considerable timber potential of our native species. This is probably because we have been raised on the myth that native trees are too hard to grow.

The conclusion to be drawn from Figures 1 and 2 is that given the right conditions our native trees can grow much faster than previously thought.

4. THE INCREASING RISKS TO EXOTIC FORESTS

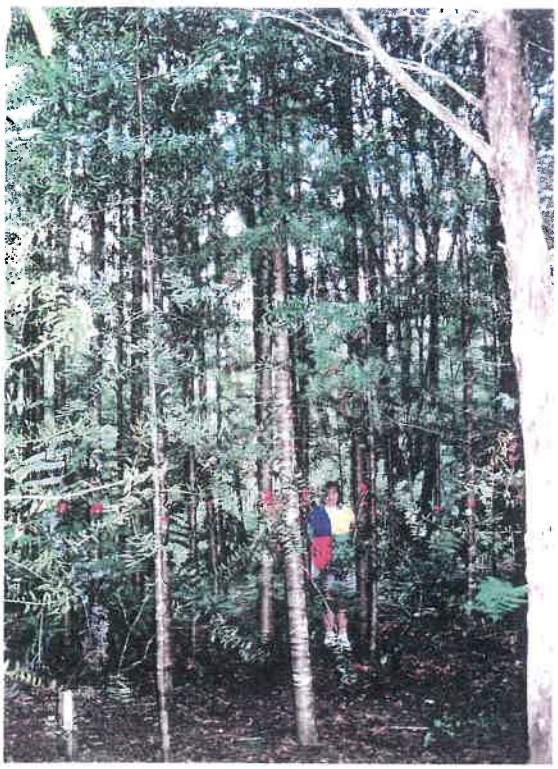


Figure 1 **Planted kauri at Mangatangi in southern Hunua Ranges:**
Age 26 on a good forest site. Mean annual increment (MAI) volume 13 m^3.
Height MAI 0.36 m., Diameter MAI 0.53cm.

Figure 2 **Kauri planted on old kiwi-fruit orchard at Tauranga:**
Age 7 on a very good site. Height M.A.I 0.88m (2.5 x forest rate).
Diameter MAI 1.6 cm (3 x forest rate)

An important reason to revisit the idea of sustainable indigenous forestry is the risk to which our exotic forests are exposed[1].

- In 1969, Pinus radiata made up 54% of our plantation forests,
- By 2002 this had increased to 91%.
- While Gipsy moth and pine pitch canker are obvious threats at present,
- In California there are 93 fungal pathogens found on P radiata,
- Of which 27 pose a high risk.
- In California 317 damaging insects are found on P radiata,
- Of which 24 pose a high risk.
- At 1993 none of the above were present in New Zealand.

5. CONCLUSION

In summary there are several very important reasons why we should be paying much greater attention to the establishment of indigenous forests for timber production.

- The timbers of many of our native trees are amongst the best in the world. Because of this many native timbers are quite valuable. Indications are that a planted and fully productive kauri forest could have an internal rate of return as high as 18% after 100 years.
- In New Zealand the most effective vegetation for carbon sequestration is a well maintained indigenous forest, sustainably managed under continuous cover principles for timber production.
- Once planted, native forests begin to increase biodiversity.
- Other positive reasons to plant native trees include improving the landscape and soil and water control — especially riparian planting for it is in these conditions that native trees will grow best.

[1] Source Flux A., Gadgil P., Bain J., Nuttall M. 1993. Forest Health: Forest tree and wood production in New Zealand. Ministry of Forestry, Wellington, 173p.

REDUCING THE IMPEDIMENTS TO PLANTING NATIVE TREES: WHAT IS THE PROBLEM?

Roger MacGibbon

Natural Logic Ltd, Trustee Tãne's Tree Trust

1. INTRODUCTION

1.1 THE PROBLEM

Under current New Zealand tax and resource management law landowners, particularly rural landowners, are not encouraged to plant native trees and shrubs in preference to introduced species - irrespective of the purpose of the planting. In fact, in many situations the law acts as an impediment to the establishment of native trees and shrubs.

1.2 THE CHALLENGE

To develop practical, workable ways to reduce, and preferably eliminate, the legal impediments that currently limit native tree planting on private land, and to lobby government to make those changes.

1.3 WHY IS TÃNE'S TREE TRUST PROMOTING THE INCREASED PLANTING OF NATIVE TREES ON PRIVATE LAND?

- to assist with the national target of halting the decline in our indigenous biodiversity
- because of the recognised value of native tree and shrub plantings in mitigating the impacts of agriculture and resource utilisation on the environment. eg. riparian management, erosion control.
- to reinforce the substantially increased interest from landowners in planting native trees on their land for multiple purposes in preference to introduced species.
- to promote the concept and practice of planting native trees to perform both productive (esp. timber) AND conservation functions.

1.4 PLANTING OF NATIVE TREES ON PRIVATE LAND IS WELL SUPPORTED BY GOVERNMENT POLICY

NZ BIODIVERSITY STRATEGY (2000)

"Maintain and restore a full range of remaining natural habitats and ecosystems to a healthy functioning state, enhance critically scarce habitats, and sustain the more modified ecosystems in production and urban environments, and do what is necessary to maintain and restore viable populations of all indigenous species and subspecies across their natural range and maintain their genetic diversity?

See Figure 1: The state of NZ's biodiversity page 9

1.5 NATIONAL POLICY STATEMENT (NPS) FOR BIODIVERSITY

This is currently being redrafted. The purpose is to provide direction to central, regional and local authorities as to how the biodiversity strategy can be implemented and its goals achieved. It is likely to be designed to equip local authorities with the "right tools for the job".

A key question is whether the NPS will only provide policy guidance or whether it should direct councils over the use of rules.

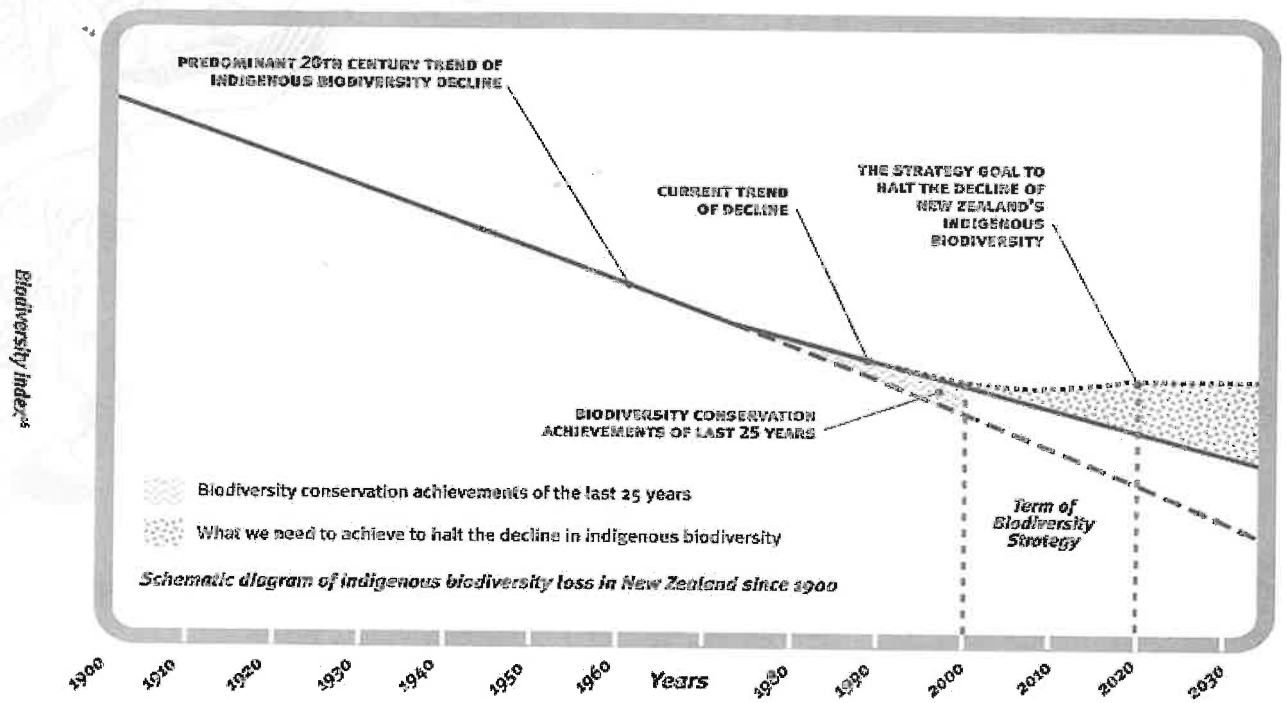


Figure 1: **The state of NZ's biodiversity**[2]

2. CURRENT SITUATION

2.1 CHANGING RURAL LANDOWNER ATTITUDES TO TREE PLANTING AND NATIVE TREES

- Landowners are now planting more trees on their properties, and using them to perform multiple functions.
- Rural landowner attitudes to, and interest in, native trees have changed considerably over the last 15 years.
- There has been a substantial increase in awareness and appreciation of our indigenous flora and fauna.
- Landowners now have an increasingly clear appreciation that tree planting for biodiversity, water quality, erosion control and shelter, as well as timber, is an integral part of sustainable and profitable farm management.
- Despite this increased interest in the planting of native trees, the degree of interest has not translated quite so emphatically into actual native tree plantings.

[2] Source New Zealand Biodiversity Strategy, 2000.

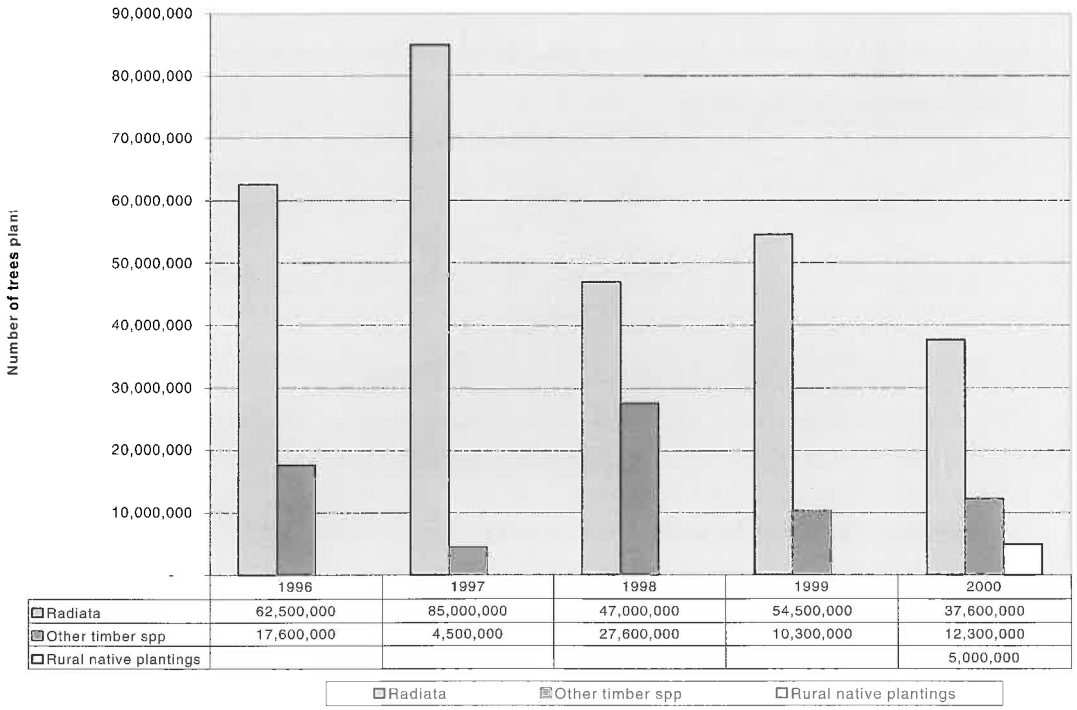


TABLE 1: **ESTIMATE OF TREES PLANTED IN RURAL NEW ZEALAND: 1996-2000**[3]

2.2 REASONS WHY PINES AND OTHER EXOTIC SPECIES ARE BEING PLANTED IN PREFERENCE TO NATIVES

A. KNOWLEDGE OF NATIVES AND THEIR HUSBANDRY

- There is limited accessibility to information on how to successfully grow natives and keep them alive.
- The strong belief that natives grow too slowly to be useful for timber production or for shelter, etc.
- Natives are expensive to establish compared to pines.

B. PERCEIVED AND REAL LEGAL IMPEDIMENTS

- The belief that it is no longer legal to grow natives for timber (on any land).
- The belief that the freedom and flexibility to manage the farm profitably will be compromised if natives are planted.
- The perception that the Resource Management Act (RMA) or local district plan will prevent future harvest or extraction (irrespective of the purpose for which the trees were planted).
- The impression that it is cheaper (in terms of cost of establishment and eligibility for tax deductions), and easier (because of less bureaucracy and less likelihood of compromise to property rights) to plant pines or other exotics.

2.3 CONSERVATION VS PRODUCTION

Perhaps the single most important underlying reason why more native trees are not planted on private land relates to the pervading view amongst government agencies that land-use for production cannot also be land-use for conservation. This perceived dichotomy between production and conservation transcends through New Zealand law, rules and regulations. This dichotomy

[3] SourceMAF statistics

would seem to be in direct conflict with the fundamental principles now being adopted for resource management "which reflect a principle called sustainability of natural and physical resources [recognising] the need to use resources, but that resource use should not lessen the capacity of the environment to provide these resources".

2.4 DICHOTOMIES

There are several legislative dichotomies associated with biodiversity and native trees[4]:

- ➢ Conservation and production
- ➢ Public and private
- ➢ Indigenous and exotic
- ➢ Protection and exploitation
- ➢ Nature and culture

2.5 SUMMARY OF THE SITUATION

- ➢ There is a political mandate to plant more native trees on private land
- ➢ There is increasing social acceptance of the need to integrate production and conservation in order to manage our landscape more sustainably, and
- ➢ There is substantial willingness amongst landowners to do both of the above voluntarily, provided that
- ➢ The law and policy makers remove the impediments to them doing so.

2.5 WHAT ARE THE LEGAL IMPEDIMENTS TO THE PLANTING OF NATIVE TREES?

There are two key areas of law that serve as an impediment to the planting of native trees on private land:

1. Existing tax law and its interpretation
2. The application of the Resource Management Act through district plans

3. THE INCOME TAX ACT

3.1 TAX DEDUCTIBILITY: THE SITUATION!

- ➢ Most forestry-related expenditure is tax deductible provided you are primarily in the business of forestry.
- ➢ Those who are in the business of property development can claim tax deductions on all or most expenses associated with the planting of native trees (and other tree species).
- ➢ Those who are in the business of farming or agriculture can only claim against $7500 of expenditure per annum associated with the planting and maintenance of any trees on the farm unless the trees were planted for timber production, erosion control or shelter.

3.2 TAX DEDUCTIBILITY : THE ISSUES!

- ➢ Is it acceptable that trees and tree planting are NOT considered to be an integral part of operating a farming business?
- ➢ Is it acceptable that plantings on a farm for habitat enhancement, biodiversity and water quality management etc. are not tax deductible when society demands it is the responsibility of land owners to manage those aspects at their own cost?

[4] Source Weaving resilience into our working lands, Parliamentary Commissioner for the Environment

➢ Is the lack of tax deductibility of expenses associated with the establishment of non-timber natives on farms consistent with the original intent of the Income Tax Act, especially as most multipurpose tree plantings are considered to be an integral part of operating a property sustainably and profitably?

3.3 TAX ON THE VALUE OF STANDING TREES: THE SITUATION!

Irrespective of the purpose for which a tree or trees were planted, the increased value of any standing timber during the period of ownership will be taxed when the property is sold.

The only exceptions to this are:

➢ Trees over which a Forestry Right applies.

➢ Where the timber is deemed to have zero value because they cannot be harvested : eg. - where District Plan rules prohibit harvest or where the trees are in an area protected by QEII covenant

3.4 TAX ON THE VALUE OF STANDING TREES: THE ISSUES!

➢ Is this tax requirement widely known and applied?

➢ Who is going to do all the timber valuations?

➢ This will further penalise those who are attempting to manage their properties sustainably. The most financially prudent approach would be to only plant trees that can be harvested during the period of ownership, or that will realise their full standing value in the sale price. Otherwise you might choose to cut down every tree on your property prior to sale! Is this what society wants?

4. DISTRICT PLANS AND THE RMA

4.1 HOW DO DISTRICT PLANS AFFECT WHAT LANDOWNERS CAN AND CAN'T DO WITH NATIVE TREES ON THEIR LAND?

There is a general (and pervading) perception amongst rural landowners that if they plant native trees on their land the RMA and district plan rules will restrict what they can and can't do with those trees and the land they grow on.

These restrictions are perceived to include: loss of management flexibility, commitment to non-productive use of that land, inability to fell trees in the future, the cost and hassles associated with obtaining resource consents, and the risk associated with the unknown factor of what society may require of indigenous flora and fauna in the future.

4.2 STUDY OF DISTRICT COUNCILS FROM THE UPPER NORTH ISLAND AND THE IMPACT OF THEIR DISTRICT PLANS ON NATIVE TREE PLANTING AND MANAGEMENT

A study was undertaken to determine the impact that District Plans have on what a landowner can do with planted native trees.

➢ 31 district councils in the upper North Island were chosen as the subject councils.

➢ Only 23 of the 31 contacted were able to supply copies of their District Plan or relevant sections over the internet or at reasonable cost.

➢ The plans obtained were scrutinised for sections relevant to native tree planting, management, and harvest.

➢ Many of the 31 councils were phoned to obtain information and especially to provide interpretation of their plans.

➢ 12 of the 23 plans which were obtained were selected for detailed study.

TABLE 2 DISTRICT PLANS AND THE RMA

A Study of District Councils form the Upper North Island and the impact of their District Plans on Indigenous Tree Planting and Management

District Councils by Region	No. of Councils studied	Clauses Related to Forestry		Indigenous Vegetation Distinguished from Exotic		Planted Indigenous Vegetation Distinguished from Existing Indigenous vegetation		Number of councils studied in detail	Mechanism to Register Planted Indigenous Stands		
		Yes	No	Yes	No	Yes	No		Yes	No	Not Necessary
Northland	3	3	0	3	0	1	2	2		2	
Auckland	5	5	0	3	2	2	3	2		1	1
Waikato	6	6	0	4	2	0	6	2		2	
Bay of Plenty	4	4	0	3	1	1	3	2	1?	1	
Taranaki	3	3	0	2	1	2	1	2		1	1
Gisborne	1	1	0	1	0	1	0	1		1	
Hawke's Bay	1	1	0	1	0	0	1	1		1	
	23	**23**	**0**	**17**	**6**	**7**	**16**	**12**	**1?**	**9**	**2**

For the 12 district plans studied in detail Councils fell into three categories:

Category 1:	Plans that did not distinguish between exotic and indigenous or planted and existing native vegetation	2 Councils Franklin & New Plymouth
Category 2:	Plans that distinguished between exotic and indigenous vegetation but not between planted and existing indigenous.	6 councils: Kaipara, North Shore, Opotiki Otorohanga, Waipa, Whangarei
Category 3:	Plans that distinguished between exotic and indigenous AND planted and existing indigenous vegetation	4 councils: Gisborne, Hastings, Rotorua South Taranaki

4.3 OBSERVATIONS ARISING FROM THE STUDY

- Councils vary considerably in how they deal with native trees and native forestry in their district plans.
- Most plans are difficult to navigate around and several were almost impossible to interpret on issues related to native plants.
- Many council staff spoken to were unclear as to how the rules in their plan would impact upon landowners with planted native trees.
- Several council staff spoken to gave incorrect information. e.g. 3 stated that the Forests Act governed how native trees planted for timber should be managed (the Forests Act does not do this) and that we should contact MAF. At least one council said we should contact DoC as this was their responsibility, but DoC has no responsibilities here.

4.4 CONTRASTING DEFINITIONS OF FORESTRY

FRANKLIN DISTRICT COUNCIL DEFINITION OF "FORESTRY" (a permitted activity):

"the on-going management of trees or areas for the production of timber, for soil conservation or water control or waste disposal or purification purposes, or for aesthetic or scientific purposes, and includes planting, pruning, felling and removal from the site of trees."

Compared with:

ROTORUA DISTRICT COUNCIL'S DEFINITION OF "PRODUCTION FORESTRY" (also a permitted activity):

"the system of growing selected indigenous or exotic species of trees which are specifically planted, managed and harvested for the production of timber or wood based products."

4.5 ISSUES ARISING FROM THE STUDY

- 6 of the 12 district plans require consent for harvest of recognised forestry plantings, and 10 of the 12 plans studied require consents to be issued before planted native trees can be removed for farm management purposes depending on the area of vegetation proposed for removal. The process of applying for consent is seen by many landowners as an onerous and costly process and certainly a deterrent to planting more natives.
- The rules in many plans do not provide landowners with sufficient management flexibility when native trees are planted. Six of the 12 plans studied in detail do not distinguish planted natives from natural vegetation which means all planted natives are effectively included in restrictive rules preventing the felling of existing native vegetation.
- Of the 4 plans that distinguish between planted and natural native vegetation only 1 has a mechanism to officially document a planted stand and the purpose of that planting.

4.6 CONCLUSIONS

- The majority of district plans accentuate the protection versus production and native versus exotic dichotomies and this tends to be in conflict with truly sustainable land management practices which look to utilise trees for multiple purposes.
- Most district plans and councils provide no mechanism for the sustainable utilisation of native trees.
- In their district plans few Councils appear to promote the planting of native trees on farmland.
- In most districts, unless a landowner is in the business of forestry or intends to shut up all native plantings he / she is likely to be penalised, in terms of cost, time and loss of management flexibility, if they plant natives for multiple purposes on their land. ***It is easier and less costly to plant pines...***

CURRENT INTERPRETATION OF TAXATION WITH RESPECT TO INDIGENOUS AND EXOTIC TREES

Ron Gleeson
Inland Revenue Department

1. GENERAL OUTLINE

What qualifies as "Being in the business of forestry?

Standing Timber - *Gross income derived from any form of disposition (including rights).*

(Section references generally relate to the Income Tax Act 1994).

2. FOREST ESTABLISHMENT ISSUES

2.1 BRIEF AND LOGICAL CONSIDERATIONS ONE SHOULD EVALUATE PRIOR TO PLANTING A FOREST:

- Site risk. Wind, snow, drought, frost, cyclones, global warming.
- Proximity of port.
- Roading access
- GE ratings Silvicultural regime
- Ensure that seedlings establish. Moisture requirements etc.
- Releasing regime in early years. Blanking in 12 months. Pest control -rabbits, hares.
- And above all, a profitable return.

2.2 GENERAL INFORMATION (FOR EXOTICS)

- Average rotation of radiata crop is 27 yrs (depending on market forces).
- Plant 1000 stems, harvest 350 per ha.
- Usually 3 lifts (prune) in life of tree at 4/6/8 years.
- 3~4 metres crown left each prune. Thin at 4 and 8 yrs. Variations. CIear-wood vs. low value timber.
- Production thinning. Cost benefit -is it viable? Alternative is waste thinning and leaving to rot. Malformed trees, unpruned/unthinned = Pulp?

OTHER CONSIDERATIONS

- How have trees been treated over time? Poor planning means poor returns.
- Prior use of land may be an issue.
- Alternatives land uses. Why indigenous plantings?
- Sustainable management plan required for indigenous forestry.(MAF)
- RMA considerations are a big hurdle.

3. HARVESTING ISSUES

3.1 Matters to be Considered:

- Environment
- Health and safety
- Contractor skills

- Clearfell versus selection harvest
- Roading costs
- Access
- Available transport
- Proximity to ports
- Log prices
- Grades
- Pre harvest inventory to maximize Net Present Value (NPV) *Note that NPV of timber changes drastically over time.*
- Co-ordination of harvest
- Weather patterns
- Site clean up

3.2 Some basic businesslike considerations:

Budgets: Cash flow statements, prior planning

Financing: Who is fronting with the finance? Likelihood of recovering investment? What interest rates are applicable?

What tax vehicle is being used? Partnership, company, sole trader, trust?

Other business interests: Are other activities business-like?

Logging plans/access:

Replanting plans:

4. SOME BASIC TAX IMPLICATIONS OF FORESTRY

From a tax perspective there are six important stages in the forestry cycle.

- Any pre- acquisition expenses
- Land and timber acquisition
- The land preparation process
- Tree planting
- The silvicultural process
- Sale of the mature timber or of land carrying immature timber.

4.1 Forestry business. The general business test:

In the leading case, *Grieve v Commisioner of Inland Revenue*[5], Richardson J held that the decision whether or not a taxpayer is in business involves a twofold inquiry as to:

(a) the nature of the activities carried on; and

(b) the intention of the taxpayer in engaging in those activities.

The same legal principles used in Grieve apply in deciding whether a venture is a **forestry business.**

His Honour made the following observations:

"*Statements by the taxpayer as to his intentions are of course relevant but actions will often speak louder than words*".

[5] *Grieve v Commisioner of Inland Revenue* (1984) 6 NZTC 61,682 (CA).

Amongst the matters which were properly considered in that inquiry were:

- the nature of the activity,
- the period over which it was engaged in,
- the scale of operations and the volume of transactions,
- the commitment of time, money and effort,
- the pattern of activity, and
- the financial results.

4.2 Important terminology:

CJ 1 Income From Minerals, Timber, or Flax

The gross income of any person shall include

(a) The extraction, removal, or sale or other disposition of any minerals, flax, or timber; or

(b) The sale or other disposition of any right to take timber,-

Section CJ 1 includes as gross income all amounts derived from the extraction, removal, sale or other disposition of any timber or the sale or disposition of any right to take timber.

CJ 1(2) Sale of land with standing timber

This is a sale or disposition of land with standing timber on the land, except to the extent that the timber is-

(a) Ornamental or incidental trees; or

(b) Subject to a forestry right.

Therefore any sale proceeds attributable to standing timber will not be gross income to the extent that the timber is: -

(a) ornamental or incidental trees (each case on its own merits)

(b) timber subject to a forestry right (the disposition of the 'right' is income).

Standing timber is capital and part of the land until severed. It includes mature trees and erosion plantings but does not include ornamental or incidental plantings or standing timber subject to a forestry right.

A "forestry right" is a right to take timber created under the Forestry Rights Registration Act 1983. It is registered on the title. It does not give exclusive possession of the land.

5. DEFINITIONS AND OTHER MATTERS

5.1 What is timber? When is a tree "timber"? When is a tree not a tree?

Timber not defined.

Commentary from Case E97[6] states it is:

- "*commercially saleable and usable wood in its natural state*"
- Dictionary meaning: wood suitable for building or for carpentry.
- Shelterbelts are standing timber -sale for firewood or other uses.
- Perhaps not colonisers[7]. Not fruit trees (but depends on end use).

[6] Case E97 (1982) 5 NZTC 59,515,

[7] Colonialisers is alternative name for plants (both indigenous and exotic) which may be established as nurse plants to protect the crop trees which are intended to produce timber. Nurse plants may die out naturally or be removed by thinning.

➢ A tree, according to the Oxford Dictionary of Ecology, is defined as:

"a woody plant with a single main stem (the trunk) that is unbranched near the ground. Some trees, oak and ash have multi-trunked forms. At the end of growing season there is no die-back of aerial parts apart from the loss of foliage."

➢ A shrub is defined as:

"Woody plant which branches below or near the ground level into several main sterns, so that it has no clear trunk."

Spreading:

The income derived from the sale of lumber or timber-cutting rights can be spread at the taxpayer's option over the year of sale and three preceding income years, under section EJ 1. The allowable deductions for the cost of the timber must be spread on an equivalent basis, [section EJ 1(2)].

Death:

Is a disposition[8].

Compensation for loss of timber/timber rights

Section DL 1(12) specifically includes compensation payments for the loss or destruction of standing timber as gross income to any person carrying on a forestry business on any land in New Zealand (but allows a deduction for the cost of the timber).

Matrimonial transfer and forestry:

In some instances timber or a right to take timber or land with standing timber on it may be transferred pursuant to a matrimonial agreement.

Income equalisation reserve scheme and forestry:

Individuals: Individuals carrying on a forestry business are entitled to use the income equalisation provisions.

Forestry Companies: A forestry company is entitled to make deposits to an income equalisation reserve account in respect of income from thinning operations.

Farmers and tree planting:

Section DO 7 provides a limited deduction. From the 1991/92 income year the deduction cannot exceed $7,500.

Shelter trees:

See Section DO 3

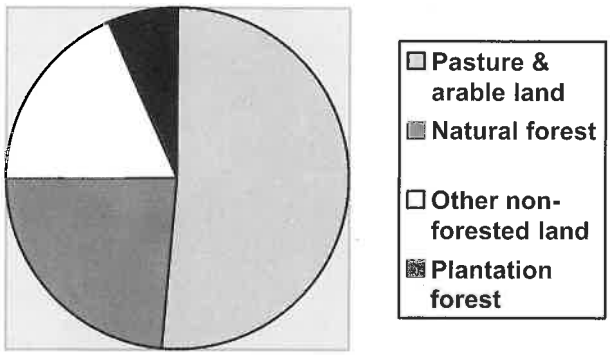
[8] Disposition is the transfer of property to the possession of another person, especially by will or deed.

INDIGENOUS FORESTRY

Presented by Matt Hanna

Lewis'
Cambridge
Solicitors

NEW ZEALAND LAND USE
(Total area of New Zealand 27.0 million hectares)



	Hectares (millions)	% of total
Pasture & arable land	13.9	51%
Natural forest	6.4	24%
Other non-forested land	5	18%
Plantation forest	1.8	7%

PLANTATION FOREST AREA BY SPECIES
(as at 1 April 2001)

	Hectares (thousands)	% of total
Radiata pine	1,608	89.4
Douglas fir	103	5.7
Other exotic hardwoods	34	1.9
All exotic hardwoods	54	3
Total	**1,799**	100

1. IS INDIGENOUS FORESTRY A BUSINESS?

1.1 Historical Perspective:

- It is estimated that the volume of standing kauri timber at the beginning of the 19th century was 3,820 million cubic metres
- By 1885 the standing timber volume had depleted by 50%
- By 1903 annual harvest had reduced to 340,000 cubic metres and was declining rapidly, with 40% being exported
- Indigenous forests were a natural resource for exploitation.
- Sir Francis Bell the Inaugural Commissioner of Forests said in 1921 when addressing a meeting of the conservators of forests:

"If we can keep a supply of timber for our children's children and their children's children, that will effect my aim We must remember the majority of the people in New Zealand and perhaps the majority of the people of the House do not care anything about forestry. We have got to be missionaries. We have got to show and prove that the principle of establishing, controlling and managing our forests is a matter of public concern."

Kauri Plantation, planted for the youngest generation

2. A MODERN INDIGENOUS FOREST

2.1 Business Activity Factual History - A Case Study:

- In 1995 the owners researched the site suitability for developing forestry.
- In 1996 a sustainable forest management plan was prepared by Roger MacGibbon.
- The management plan proposed that: "*most indigenous timber species will be best managed (ultimately) as mixed age, self regenerating, mixed species forests that are managed and harvested on a sustainable basis where individual trees are selected and harvested when they reach the necessary prescriptions for sale.*"
- The management plan estimated the annual income at $290,000 p.a from first harvest.
- In 1997 Waipa District Council was notified of the management plan and a copy of the placed on the property file.
- From 1996 to 1999 there was considerable labour input from the owners in releasing trees and in the establishment of the forest.
- In the year ended March 1997 16,000 colonisers[9] and canopy trees were planted, releasing and pest control was undertaken.
- In the year ending March 1998 15,000 colonisers and canopy trees were planted.
- In the year ended March 1999 10,000 colonisers and canopy trees were planted.

[9] Colonisers is alternative name for plants (both indigenous and exotic) which may be established as nurse plants to protect the crop trees which are intended to produce timber. Nurse plants may die out naturally or be removed by thinning.

- ➢ The total expenditure has been in excess of $150K
- ➢ The Inland Revenue Department (IRD) initially determined that there was no forestry business in existence. Section OB 1 of the 1TA defines business as follows:

"*Business* -

includes any profession, trade, manufacture, or undertaking carried on for pecuniary profit; is further defined in Schedule 6A for the purposes of that Schedule."

2.2 The leading case is Grieve v Commissioner of Inland Revenue (CIR) Court of Appeal NZ.

Questions of fact to be examined:

- ➢ The nature of the activity
- ➢ The period over which it was engaged in
- ➢ The scale of operations and value of transactions
- ➢ The commitment of time, money and effort
- ➢ The pattern of activity and financial results and whether the activity is of the same kind and was carried on in the same manner as would be expected from a profitable farm in the sense that usual operations are characteristics of a type of profitable farming.

Inland Revenue Mission Statement that taxpayers should be aware of:

"*We aim to maximise compliance with New Zealand tax and social policy legislation.*"

3. INDICATORS OF AN INDIGENOUS FORESTRY BUSINESS

Such a business should be deemed to exist for a tax payer if the following exist: -

1. A section 139 RMA Certificate of Compliance.
2. A sustainable management plan.
3. Budgets, cashflows, Excel spreadsheets.
4. GST registration. Specified taxable activities of proprietors, ie: indigenous forestry.
5. Clear intentions in correspondence.
6. Appropriate forestry taxation treatment in accounts.

TABLE 1 DEDUCTIONS AGAINST INCOME TAX ACT APPLICABLE SECTIONS

	Forester	Farmer/ Agriculturalist	Non-Farmer
Planting Trees	DL 1 planting and maintaining trees	DO 3 -erosion -shelter	Not available
		DO 7 -$7500	Not available General deductibility provisions
Selling Trees	Sale CJ 1 (2) Issues: -Indigenous forestry not a monoculture. -Colonisers not all trees	All trees captured unless ornamental or incidental Issues: -Biodiversity -Water quality -riparian planting -Biological impacts -Maximum deduction $7500 -No other businesses have maximum deductions.	All trees captured

Recommendations from the Hamilton workshop (as presented at the Wellington workshop) were:

1. IRD acceptance that indigenous forestry is a long term business and not the same as a monocultural business.
2. Section DO3 needs to be amended by deleting subsections (e) & (f) and removing the $7500 limit.
3. Clarity is required that ornamental and incidental includes trees planted for biodiversity, water quality, erosion, and shelter not taxable on sale of land unless merchantable timber trees.

3.1 Deductibility of Forestry Expenses:

- *Section DL1 (2)* Deduction for any expenditure incurred in the planting or maintaining of trees on the land. Trees for colonisers therefore should be deductible.
- Monoculture selection process by elimination 7-10 years.
- Indigenous multi species selection and form by plant habitat.
- What is needed is clear IRD policy of acceptance that expenses of tree planting with multi species colonisers qualifies under this section

3.2 Structural Issues:

- The forester must maintain the intention to run a profitable business to qualify for deductability.
- The use of forestry rights is important to give flexibility in the long term ownership of the trees, ie, where the land is to be sold and the trees retained.
- The use of loss attributing qualifying companies should be considered as a tax efficient and transaction friendly vehicle for forest ownership.
- The use of Trusts can be beneficial where or when the forest or trust is not making a tax loss.

3.3 Ancillary Businesses

Many landowners with established forests or native plantings may utilise these areas for dual purposes. The question is, how would ecotourism and hospitality fit into an indigenous forest business? It is suggested that each should be treated separately to retain the identity of the forest business.

3.4 Farmers who plant trees

Farmers plant trees for many reasons, including biodiversity, erosion control, water quality, shelter, biological enhancement and aesthetics. How should these motives fit into the scenario?

4. DEDUCTIBLE EXPENSES FARMERS OR AGRICULTURALISTS

4.1 Section D03 — Erosion/Shelter:

(e) planting and maintaining of trees for the purposes of the prevention or control of erosion;

(f) The planting and maintaining of trees for the purpose of providing shelter.

4.2 Section D04 - Unlimited Capital Planting

(1) Expenditure incurred by the taxpayer in developing land which is of benefit to the business in that income year is deductible on a capital depreciation basis.

4.3 Schedule 7, Item 12:

The planting of vines or trees on the land other than trees planted primarily and principally for the purposes of timber production. These trees can be depreciated at 10%per annum.

4.4 Certificate from MAF - Unlimited Depreciation Basis:

4.5 Section D07 - Ornamental

The maximum expenditure deduction is $7,500 disposition of land is trees

5. NOT A FARMER – NOT A FORESTER. ECOTOURISM OPERATOR/ PROPERTY DEVELOPER

- Sections DO3, DO4 and DO 7 don't apply – farming only.
- Sections DL don't apply – forestry only.
- Apply the general deductibility provisions in deciding gross income, ie: are the trees an integral part of the business.

6. SELLING TIMBER OR LAND AND TIMBER

6.1 General Sale Provisions:

Section CJ1: The extraction, removal, or sale or other disposition of any minerals, flax or timber or the right to take timber, whether by the owner of the land from or on which minerals, flax, or timber are obtained or situated or by any other person.

Section CJ1 (2): A sale or disposition of land with standing timber on the land, except to the extent that the timber is—

(i) Timber comprised in ornamental or incidental trees or

(ii) Subject to a forestry right (as defined in section 2 of the Forestry Rights Registration Act 1983) registered under the Land Transfer Act 1952; or

(iii) Subject to a profit à prendre granted before 1 January 1984;

- shall be deemed to include a sale or other disposition of timber under this section.

The exceptions in (ii) and (iii) are available because the forestry right or profit à prendre effectively legally severed the trees from the land.

Section OB1: Sale or disposition includes:

1. Any disposition by way of a licence or easement:
2. The grant of any right of taking any profits or produce from land:
3. In relation to any timber:
   (a) The creation or grant of any right to take timber,
   (b) The creation of a forestry right under the Forestry Rights Registration Act 1983, other than a right in favour of the proprietor;(b)
   (c) Any distribution by a company of any timber or any right to take timber that is deemed by section GD 2 to be a sale of that timber or that right.

6.2 Forester Selling Land and Trees

Disposal of timber/trading stock is taxable at market value

Valuation Issues:

- Example: 602 m^2 timber harvestable per annum for 50 years
- SMP and RMA consent to harvest Rimu, Matai, Totara, Kahikatea, Miro, Black Beech, Hard Beech, Tawa, Rewarewa, Hinau, Black Maire and Kamahi
- What is the net present value of the standing timber at the time of sale?

6.3 Non Forester Selling Land with Trees on It:

- ➢ Timber is trading stock — sale of trading stock is taxable
- ➢ What is timber? Ie, what if the trees appear to have no merchantable value?
- ➢ What if you are not in the business of forestry?
- ➢ Historically under the Land and Income Tax Act 1954 s101(4), the sale of trading stock only occurred where the business of the taxpayer comprised the dealing in such property. This issue needs resolution.

7. IDENTIFIED ISSUES THAT NEED RESOLUTION

1. The need for acceptance by the Inland Revenue Department ("IRD") that indigenous forestry is a long term business proposition which may have ancillary businesses, such as tourism attached.
2. The need for IRD clarity that indigenous multi species forestry regimes are completely different from monocultural forestry. Section DL1 (2).
3. Amendment to section D03. Farmers section to include the manifold reasons for planting indigenous forestry.
4. Alternatively confirmation that D03 subsections (e) & (f) are to be interpreted to cover those manifold purposes.
5. Or alternatively amendment to section D07 to remove the limit of $7,500 in the section.
6. Clear IRD policy statement that in relation to the sale of land with trees, the exception in section CJ 1(2) of ornamental or incidental including those trees planted for the purposes of biodiversity, amenity, erosion, shelter, aesthetics, water quality and not for commercial forestry is not taxable.
7. Land owners who sell land with significant standing timber with but no sustainable forest management and who have no right to take timber for milling are not selling standing timber. The timber has firewood value only and is not taxable.
8. For land owners who sell land with trees there is a valuation issue for those forests which have a sustainable forest management plan.

TREES CAUGHT IN THE DRIFT NET
The Resource Management Act & the Commercial Planting of Indigenous Tree Species

Robert Schofield, BA(Hons), MRRP, MNZPI
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1. INTRODUCTION – THE DRIFTNET

The potential for District Plan controls to impose an impediment on the planting of native tree species for commercial production has been an unforeseen and unintended consequence of many rules introduced through the first generation of District Plans under the Resource Management Act 1991.

As part of many Plans' policies on protecting indigenous biodiversity and areas of significant native habitat for flora and fauna, rules have been introduced that effectively prevent landowners from harvesting native trees that were planted specifically for commercial production. Generally these rules are in the form of controls on (indigenous) vegetation clearance that are intended to prevent the general decline in indigenous biodiversity in districts by requiring resource consent for the removal of or disturbance to areas of native vegetation. Such rules may be described as "driftnet controls" in which a general method for managing adverse effects unintentionally captures situations that were not envisaged by the policymakers. Often it appears that the potential for landowners to actively plant native tree species for production purposes appears to have either been overlooked or not taken seriously by Plan-makers.

While, in general, native trees species are slower growing than many of the principal exotic plantation species, under cultivated conditions many indigenous species have potential for commercial realisation. Occasionally the planting of natives may also be speculative in purpose, in that a landowner may plant trees that the next generation of landowner may realise, especially if timber values increase markedly.

There is not a relatively large amount of commercial indigenous tree planting that has occurred in New Zealand – let alone plantations ready for harvesting in the immediate future. Nevertheless, the imposition of such rules presents an inhibiting factor for those landowners considering whether to plant natives. Explaining to landowners that a consent process does not prevent harvesting often does little to instil confidence – the necessity of obtaining a resource consent still poses a potential level of uncertainty and future cost that many landowners are not willing to accept, particularly if they feel the process may get "hijacked" by conservationists.

Furthermore, there is often a perception that, even where no such rules are currently in operation, it is possible that a future council will introduce such controls that potentially prevent commercial harvesting at a later date (or at the least subject to obtaining resource consent).

In regard to the planting of native tree species for commercial production, District Plans must recognise that sustainability is not a black and white choice between production and conservation but is often a meshing of values, activities and outcomes. While such trees are growing they make a valuable contribution to the habitat of our indigenous flora and fauna. Planting natives, even in a production setting, enhances New Zealand's biodiversity: for example, riparian planting can make a significant contribution to water quality and habitats of our streams, even if there may be a short term disturbance associated with earthworks at some time in the future.

2. PURPOSE OF THIS PAPER

The purpose of this paper is to:

- Provide an overview of the circumstances in which landowners might plant native trees for profit
- Overview the nature of current impediments to the commercial planting of natives under Resource Management Act (RMA).
- Identify some of the solutions needed to resolve those impediments.
- Set the basis for consideration of how to move forward, particularly as the first generation of District Plans comes up for review.

It should be emphasized that no plans prevent the actual *planting* of native trees – it is the consequence of planting native trees that controls in plans may impose impediments upon: i.e., once planted they become "indigenous vegetation" and therefore potentially subject to rules on such "natural" resource.

3. THE PLANTING SPECTRUM: WHEN MIGHT NATIVES BE PLANTED FOR PROFIT?

The table below summarises the types of circumstances in which planting native trees for potential commercial production might occur.

"Green-fields"	Dual purpose	Riparian Planting	Standard Pasture	Erosion Prone Pasture	Exotic Plantation conversion	Scrub conversion	Supple-ment Existing Native Forest
→→→→→→→→→→→→→→→→→→→→→→→→→→→→→→							
Plantations replacing pasture or horticulture	*Agro-forestry, shelterbelts*	*Trees on riparian edges*	*Woodlots*	*To stabilize slips, etc*	*Replacing exotics with natives (inc mixed planting, with natives left once exotics harvested)*	*Turn "scrub" into commercial plantings*	*Spot planting in existing bush*

4. DISTRICT PLANS

Controls in District Plans vary but can be generally summarised as —

1. **STANDARDS-BASED** — the land use is permitted IF certain specified standards ("conditions for permitted activities") are met (for example, controls on harvesting, changes to indigenous vegetation), with consent required if any standards not met; OR
2. **LIST-BASED** — activities have to be specifically listed as a permitted activity or else require a resource consent of some form — for example, forestry... OR
3. **SOMETHING IN-BETWEEN** — using a list of types of permitted activities; with standards to meet (this is most common).

The other important element is the **definition** or interpretations part of the District Plan, where the definition of key terms might be critical to determining whether the planting/harvesting of native trees are caught in the driftnet: for example, in the meaning of "indigenous vegetation". There is no standard definition of indigenous vegetation, and there are a variety of meanings applied across New Zealand, with significant implications for the effect of different rules.

5. THE IMPEDIMENTS

There are three types of RMA impediments:

1. The Driftnet
2. End-of-the-pipe
3. Perception

The first two arise out of district plan controls, but people's perceptions are probably the most important impediment.

5.1 IMPEDIMENT 1 - THE DRIFTNET

- Controls in District Plans are not worded carefully enough to exclude commercial plantings of natives; OR
- Exclusions are hindered by lack of long-term records — who's to know in 40 years' time that some trees were planted for commercial purpose?

A typical "driftnet clause" is based on controlling the loss or modification of indigenous habitats outside Significant Natural Areas (SNAs) and/or the conservation estate — i.e., it is a general catch-all control that places limits on the clearance of indigenous vegetation using parameters such as contiguous area of vegetation, canopy height, trunk diameter and other factors. The removal or modification of indigenous vegetation that exceeds such parameters usually requires the landowner to seek resource consent.

Driftnet provisions are not deliberate in terms of the capture of commercial plantings of natives. Like many rules and other controls, often they are promulgated without anticipation of some unforeseen consequences. In terms of the planting of native species for commercial production, there is a common perception that they grow too slowly to be commercially attractive. However, as discussed there are usually many reasons to plant natives, one purpose of which may be to eventually harvest for production purposes.

The solution is to amend District Plan wording to exclude natives planted for commercial production – or to avoid such outcome in future provisions through specific recognition in Plan policies.

However, in providing for such plantings, how are we to know when trees are planted commercially (other than in straight line plantations!) — for example, spot planting in existing bush? One solution is to register commercial plantings on titles, although this is a costly process. Another solution is that used by the Western Bay of Plenty District Council, which tags titles on its property information database.

5.2 IMPEDIMENT 2 — END-OF-THE-PIPE

"End-of-the-pipe" impediments occur at the time of harvesting native trees — i.e., when general rules on logging take effect as the native trees are to be felled. Sometimes, such controls are based on a maximum area of harvesting – resource consent required if more than xm^2 of planting to be harvested.

While such controls do not prevent harvesting, but instead subject proposed felling to the consent process, they create uncertainty and costs that can make programmes unfeasible. Even where a Plan may have no such controls at present, the uncertainty of future controls is often a factor in a landowner's decision-making process.

It is not suggested that the harvesting of natives be excluded from any controls on the harvesting of native tree plantations: the effects of harvesting trees en masse should be comparable whatever species are used. However, cognisance of the differing method of harvesting is also a relevant factor – for example, mass ground clearance versus helicopter-based selected logging.

Harvesting controls should be effects-based, so as part of the section 32 process of introducing/ reviewing such controls, focus should be on the environmental effects being managed by such rules, the significance of such effects (including their longevity/permanence) and whether other

methods (such as riparian setbacks or Codes of Practice) may be more effective and appropriate? Some effects may be better managed by regional controls — for example, controls for erosion-management and soil conservation purposes.

Furthermore, if they are deemed appropriate, can harvesting rules be better focused? For example, can the controls be tightened to exclude harvesting where the scale of effects is relatively minor such as where selective logging or logging by helicopter is involved?

5.3 IMPEDIMENT 3 — PERCEPTION

Sometimes, RMA 'impediments' may be perception-based — that is: -

- If it is not permitted, then it's prohibited; or
- That the consent process is just "another brick in the wall"; or
- There is bound to be some control that'll stop me ("I've read about what happened in Far-off District"...); or
- "I'm doing a good thing, why should there be any controls at all".

Sometimes, a poor understanding by or response from Council affects perceptions, even if it was historical or not even directly relevant.

These issues are more difficult to solve, but a careful analysis of the rules relating to indigenous biodiversity, combined with a participatory consultation approach on district plan policy-making, should ensure that some of these difficulties are culled before they arise. Landowners should have the opportunity to achieve their aims without the perception of unnecessary coercion.

If controls are necessary, then the policy-making should not stop there, but continue to look for incentives or compensatory strategies, such as rates relief or exemption from consent fees. Promotional programmes, education and information may also be useful, particularly where negative perceptions by landowners about District Plan controls – rightly or wrongly – exist.

Even in areas where there are no controls on the planting and harvesting of native trees, some positive promotion of the lack of controls may be a useful part of promotional programmes for indigenous biodiversity.

6. WHAT'S NEEDED?

There are three key things that are needed to ensure that RMA policies in Plans do not prevent the planting of indigenous trees for production purposes, and indeed may actually promote such planting.

First, and at the least, any unintentional and unnecessary impediments to commercial planting of native tree species should be removed by recognising the need for landowners to be able to plant natives for commercial production, in the development of policies and rules on vegetation clearance.

This result might be able to be achieved by making exemption clauses for such circumstances as necessary. For example:

> *"This standard shall not apply to the harvesting of indigenous vegetation that was planted for commercial production and has been registered against the Certificate of Title of the land in which the vegetation is located"*

It may also require that some thought be given as to whether any rules would catch the planting of natives, even intentionally – for example, does "the disturbance" of indigenous vegetation capture the level of disturbance that might be needed to plant trees?

Second, some consideration could be given as to whether district plan policies might seek to encourage the planting of indigenous trees – can positive incentives be created?

Third, these changes should preferably be brought about as soon as practicable, whenever the policies on indigenous biodiversity are due for review.

But first...

It is important to first obtain a good level of knowledge about the planting and harvesting of native trees for production — for example:

- The Forests Act does not address the logging of commercial plantings of natives on private land
- There are many potential types of native tree planting, and not solely the traditional plantation type — it could be achieved through woodlot, agro-forestry, shelter belts, riparian planting, and spot planting (refer to table above)
- Planting is done to diversify the use of land, sometimes as a long-term "punt"
- The motives of landowners planting native trees are often mixed – its not solely for profit, but it could also be for intergenerational reasons (legacy for family); aesthetics; sense of identity and 'kiwi-ness'; and a feeling of putting something back etc.

7. WHAT SOLUTIONS ARE NEEDED?

There are several issues to address:

- Inadequate understanding about the issues, both within Councils and by landowners;
- Creating driftnet problems — i.e., preventing unnecessary RMA controls that cause impediments; and
- Making the RMA pro-active by finding ways to promote the planting of natives.

Some areas of possible solutions include: -

- Better knowledge — Improving the overall level of understanding about the issues
- Cutting holes in the driftnet — removing unnecessary impediments in District Plans
- Developing local Biodiversity strategies — working collaboratively to find incentives to plant natives

These can be achieved by: -

7.1 REMOVING IMPEDIMENTS

The immediate need is to change District Plans that currently contain impediments to planting natives — but how can this be done in the short-term? It could be achieved through –

- Directives from Government such as by
  - Changing the Act?
  - Through Biodiversity National Policy Statements?
  - Reviews of Regional Policy Statements?
- Request for Plan Changes by some groups?
- Taking the soft approach by providing guidelines and best practice advice?

Given the costs and problems of many of these options, it is probably best to focus on raising awareness across New Zealand, so that all parties have an understanding of the issues, particularly at the time Plans are reviewed – it may only take a submission on a proposed Plan or Plan Change.

7.2 WIDENING KNOWLEDGE

It is important that there is a good level of understanding by appropriate people about the planting of natives. This concerns not just local authorities, but also landowners and their advisers. Improving knowledge can be obtained through —

- Information, such as brochures, articles
- Guidelines, model provisions

- Upskilling - workshops, conferences, seminars

- Best practice (for example, identifying good practice to planners)

Further research into sustainable management methods under the RMA may also yield better knowledge about the appropriate levels and mixes of incentives, regulatory controls and promotional efforts that best achieve the protection of our indigenous biodiversity.

7.3 PROMOTING PLANTING

At the least, Plans must enable people to plant natives for commercial production. However, it is possible for Plans to take a more proactive policy approach.

For instance, local biodiversity strategies could be developed using a collaborative approach (noting the opportunities in the Long Term Council Community Plans (LTCCP) that have to be developed under the Local Government Act 2002). Local authorities should be made aware of pilot studies and demonstrations of the commercial production of native trees; this knowledge could then be promoted.

However, is there a role under the RMA to actively promote the planting of natives? While there is probably little scope for major incentives to be achieved, some regulatory incentives might include—

- ➢ Excluding some harvesting practices from controls; or
- ➢ Bonus rights such as extra lots for planting natives; or
- ➢ Exclusion rights, such as registering a forestry management plan to establish exemption from RMA rules.

8. POTENTIAL ISSUES

The planting of native tree species for commercial purposes raises a number of issues, including the potential effects of –

- ➢ Replacing regenerating scrub with monoculture and/or non-endemic native species
- ➢ Self-seeding from native plantings (for example, effects on adjacent conservation estate)
- ➢ The logging of planted trees: for example, in existing indigenous forest or in riparian situations
- ➢ Undertaking plantation forestry on erosion-prone land

None of these issues are of such significance that there should be controls to prevent the commercial planting of natives – these issues relate as much to exotic tree species as they do to indigenous species (indeed, more so, for some invasive types of exotic trees).

9. CONCLUSION – FINDING SOLUTIONS

The most immediate issue is the need to find an effective way to remove existing unnecessary RMA impediments – i.e., those driftnet rules in current district plans. There is no ready solution for addressing this issue in the short-term: the most effective method is to raise awareness throughout New Zealand and by ensuring that reviews of plans take adequate cognizance of the need to provide for the commercial use of natives.

One way to raise awareness may be to produce some short guidelines (no more than 4-6 pages) for local authorities and others on the issues and solutions.

Should it ever emerge, the proposed Indigenous Biodiversity National Policy Statement could ensure that this issue is addressed pro-actively, by seeking to impose no unnecessary impediments.

In the longer-term, it would be preferable to undertake research into best practice in order to clarify the need for controls and identify best practice. Other ways could include workshops, model provisions or best practice guidance, and perhaps even a new form of covenant through new legislation. Even the RMA itself could well be changed at some later date – it has to be remembered that those plantations that are currently being harvested were first planted well before the introduction of the Resource Management Act.

NOTES ON THE FORESTS ACT 1949

Alan Griffiths, MAF

PART III A FORESTS ACT 1949: PLANTED INDIGENOUS FORESTS

INTERPRETATION

"Indigenous": in relation to a species of flora or fauna, means a species that occurs naturally in New Zealand or arrived in New Zealand without human assistance;

"Indigenous forest land": means land wholly or predominantly under the cover of indigenous flora;

"Planted indigenous forest": means any indigenous trees or tree ferns that have been planted on land that was not indigenous forest land immediately before such planting and was not indigenous forest land immediately before the land was prepared for such planting;

"Sawmill": means any factory or industrial plant (whether permanently fixed or portable) that is directly dependent on supplies of logs and produces sawn timber or wood chips.

PART III A SECTION 67A (1)

Nothing in this part (Part lII A) applies to any of the following:

(d) Any indigenous timber from any planted indigenous forest.

SECTION 67D. PROHIBITION ON MILLING INDIGENOUS TIMBER -

No person shall mill at any sawmill any indigenous timber unless -

67D(1)(b)(vii)

The Secretary has stated in writing that he or she is satisfied that the timber has been lawfully taken from -

(c) Any planted indigenous forest

SECTION 67Q RECORDS

(1) The operator of any sawmill milling indigenous timber shall retain ... a record of particulars relating to the source of such timber including separate records specifically relating to -

(b) Timber harvested pursuant to an exemption under this Act.

REDUCING THE IMPEDIMENTS TO PLANTING NATIVE TREES

Options for action

Roger MacGibbon

1. THE CHALLENGE:

To develop practical, workable ways to reduce, and preferably eliminate, the legal impediments that currently limit native tree planting on private land, and to lobby government to make those changes.

1.1 THE INCOME TAX ACT

1. Action not requiring law change:

- Widen the current interpretation of what "being in the business of forestry" is.
- Obtaining a policy statement from IRD clarifying that indigenous forestry is a legitimate business and highlighting the management essentials of that business. e.g. use of colonisers.
- Clarify what "ornamental" and "incidental" trees are, as referred to in the Income Tax Act *(ornamental and Incidental trees are exempt from taxation at the point of sale).*

2. Action requiring a change In law:

- Remove the current cap of $7500 for claimable tree planting expenses for those in the business of farming, and
- Remove the "shelter' and "erosion" categories from section D03 of the Act so that all expenses associated with tree planting and maintenance on land used for farming or agricultural purposes are fully tax deductible.
- Remove the taxation on standing timber for those not in the business of forestry.

1.2 DISTRICT PLANS AND THE RESOURCE MANAGEMENT ACT (RMA)

1. Education

- Of relevant Council staff on matters related to planted indigenous forestry practice and the law, and interpretation of their district plans where they are relative to indigenous forestry.
- Of landowners and advisers on the process of obtaining resource consents.

2. Mechanisms within Councils

- Develop a planted native forestry register that records the purpose of the tree planting and attaches it to the property file, eg. Western Bay of Plenty DC.
- Are there other mechanisms which could be considered?

3. Make changes to District Plans

- All district plans to have sections that refer specifically to natives planted on rural land.
- Widen the definition of forestry to include natives and a broader scope of tree-related activities than just timber production, eg. Franklin District definition.
- Simplify and consolidate plans so that the public can more easily find the sections that are relevant to them.

4. **National Policy Statement on Biodiversity**

➢ Make submissions to MfE on the biodiversity NPS.

5. **Other possibilities:**

➢ Voluntary registration of native plantings under the Forests Act.

➢ Development of an additional QE II covenant category to provide protection AND management flexibility to rural native tree plantings.

➢ Utilisation of Forestry Rights to overcome taxation, harvest and sustainable management obstacles.

Our vision:

"To see the majority of New Zealand landowners successfully planting and sustainably managing indigenous trees for multiple uses by 2020."

SEMINAR DISCUSSION GROUPS

SUMMARY COMPILED BY IAN BARTON FROM VARIOUS DISCUSSION NOTES

At each seminar the last part of the day saw the participants divided into two groups; taxation and Resource Management Act. With one person as moderator and another as recorder, they discussed various aspects of the problems as highlighted by the presentations given. The following section attempts to draw from these discussions the main issues of concern and how best these might be addressed in future.

Table 1 outlines how the discussions were broken down into groups of issues. These were then discussed separately.

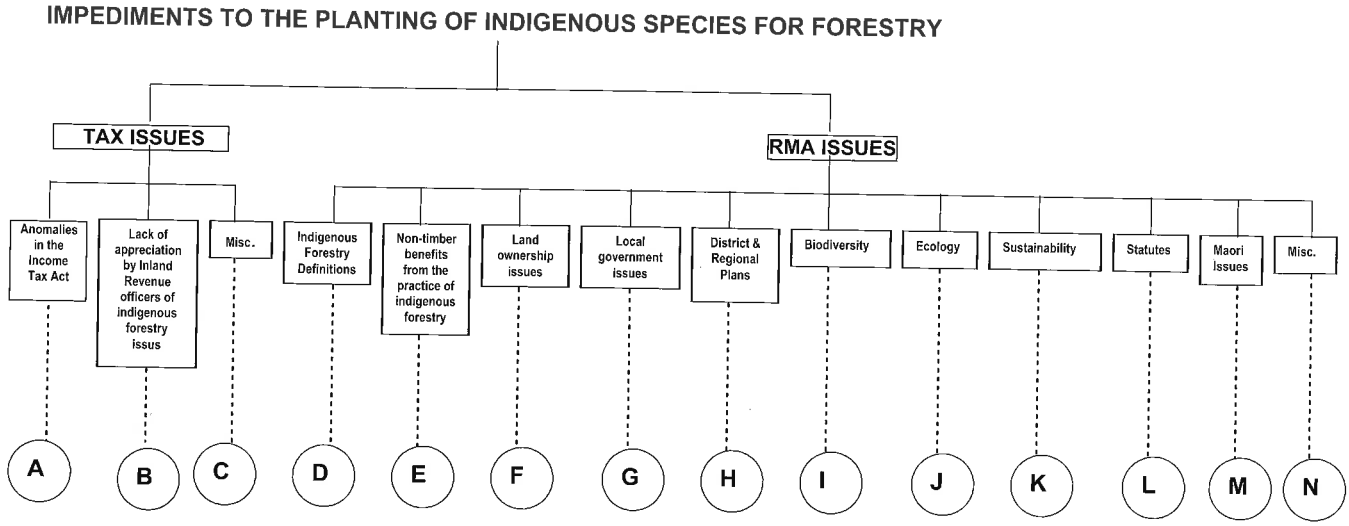

Table 1

1. TAX ISSUES

A Anomalies in the Income Tax Act

Issues raised under this heading included the $7500 limit for tree planting tax deductions and having Section DO 3 of the Income Tax Act apply to all landowners, not just farmers. However the issue with the greatest impact is probably how the Department applies the "Business Test" to a person seeking tax exemption. In their presentations both M Hanna and R Gleason quoted the case of Grieve –v- the Commissioner of Inland Revenue (1984), which determined how to ascertain whether or not a taxpayer was in business. (Refer Gleason page 16-17 and Hanna page 21)

B Lack of appreciation by Inland Revenue officers of Indigenous Forestry Issues

This group of issues deals mainly with the technicalities of indigenous forestry and is also covered under D. In the tax section however it focuses more upon the apparent lack of indigenous forestry knowledge amongst tax officials.

Probably the basic difficulties which tax officials have relate to the time thought to be required for native trees to reach harvestable size and the manner of harvesting. There are three problems here; first it probably will take more than 30 years, and New Zealanders as a whole have become used to 30 year rotations for forestry. Moving past this requires a mental ability which is not common. Secondly, virtually all New Zealanders think that native trees take much longer to reach maturity than will be the case with effective management. Education of

all, not just tax officials, is required here. Thirdly taxation law in New Zealand only seems able to envisage growing trees on a rotation determined by age (and generally dictated by economic factors) and then converting the crop to a taxable return by clear felling. This is not usually the case with indigenous forestry.

The other problem areas are concerned with the relatively high cost of establishing a native forest; relative that is to *Pinus radiata,* where the initial cost of establishment and silviculture will be in the vicinity of $2000 to $4000 per hectare -depending upon site condition and silvicultural regime. Establishing a new indigenous forest to the point that the trees require no further releasing, could cost between $9000 and $30000, depending upon whether the planting is into an established nurse of scrubland or planted, with nurse plants, on to bare ground. From Inland Revenue's viewpoint this is rather a large sum of money to allow a tax deduction on, especially since at present they probably do not expect to be able to tax the sale of the timber for over 100 years!

C Miscellaneous Issues

There are a few issues which appear to cloud the situation. When indigenous trees are planted there are often multiple reasons for doing so; aesthetics, biodiversity, landscape, carbon sequestration etc. The problem is just how these should be handled from a taxation viewpoint. Aesthetic aspects may not be deductible; biodiversity benefits probably should be and if a land owner was buying carbon credits with his trees then tax should probably be paid on this income. Another issue could be incentives. Some Councils are considering allowing subdivision rights for areas planted with trees while still allowing harvesting of the forest if managed under Continuous Cover principles. While land sales are normally treated as capital gain, there may be hidden taxation issues here.

2, RESOURCE MANAGEMENT ACT ISSUES

D Indigenous Forestry Definitions

Even experienced foresters are not yet fully up to speed with the concept of forest sustainability, Continuous Cover Forestry and the different management systems which fall under this general umbrella term. It is therefore no wonder that landowners, accountants, planners, lawyers, tax officials and people in general are not able to clearly see how the management of planted indigenous forest should be handled. Even more difficult, under present rules, is how a forest of mixed exotic and indigenous should be treated. We need to be able to look at forests as an assemblage of trees, irrespective of species and origin, to be treated according to the management system being applied. Also of importance is the continuum between forests used for production and those which are fully protected; what must be realised is that all forests provide some protection to land and water values.

The key to solving this issue is probably much better education of all involved and those who must be first brought up to speed are people working with the relevant legislation (principally the RMA and the Forests Act). The second aspect requiring attention is the Forest Management Plan. Currently these are mandatory for natural indigenous production forests. This requirement needs to be extended to all planted forest, especially indigenous and mixed indigenous / exotic forests.

E Non Timber benefits from the practice of Indigenous Forestry

The issue of taxation and other forest benefits has already been raised (C) but it also has very important implications in the resource management area. It is more and more becoming apparent that forestry, especially when practiced under Continuous Cover principles, contributes very major spin-off benefits to the environment as a whole. Issues which require consideration are: - financial assistance from Councils to land owners who protect land with forests, provision of Carbon Credits to land owners who plant Continuous Cover forests, investigation into how Continuous Cover forest management can improve the potential for habitat farming (ie, improving habitats for endangered plant and animal species) and the monitoring of all activities, especially the level of plant and animal populations.

F Land Ownership Issues

The strong issue coming forward under this heading is the need for consideration of ownership rights. Examples continually come forward from land owners who consider that the State or Local Government, usually brandishing the RMA, are removing ownership rights. This is particularly so with issues relating to indigenous forests and in this case it is a perception that once planted, trees will not be allowed to be harvested. In effect, as one workshop contributor put it, landowners need certainty, support and surety!

Another concern is the expectation, by society as a whole, that land owners will provide public goods from their land at no cost to society. Somehow this growing problem needs to be resolved.

G Local Government Issues

Most of those present at the seminars had anecdotal evidence of problems with Councils. A major problem seems to be a general lack of knowledge by Councils about indigenous forestry issues and, in addition, the entrenched views that some Councils have make it very difficult to reach agreement on forestry issues. What needs to be resolved in this area are the different roles of Regional and District councils since these are often confused in the mind of the average ratepayer -as are council mechanisms in general. The forest industry must work with Councils to improve their knowledge of forestry and to get them to take a positive approach, rather than a reactionary one, on issues relating to indigenous forestry.

H District and Regional Plans

The requirements here largely mirror those in the section above. First there is the question of understanding plans. Many people find most plans hard to understand and interpret -although a minority of plans are written in plain language. The general feeling is that there is a great need of a National Policy Statement (NPS) and that this should be followed by the regions producing Regional Policy Statements. Following this pattern would see regional and then district plans produce documents which are similar in comment, layout and language and this would be of great assistance to lay people.

I Biodiversity

This is a new term which has not yet been adequately defined[10]. There is a need to clearly define the term as it relates to forest restoration and New Zealand generally. At present it is not possible to be sure what the public perception of biodiversity is and it is likely to vary. But it is probably closely aligned with conservation, in that people feel that enhancing biodiversity requires the land in question to be fully protected; that this is not necessarily so needs to be established. The case that planted indigenous forests will greatly enhance biodiversity needs to be strongly made.

J Ecology

Under this heading fall a small number of topics which are closely related to the previous one. They mainly deal with the evolution of habitat and genetic diversity. Of concern to some is the probability that planted forests will begin to evolve back to a forest which appears to be very natural. It may thus be difficult in future to distinguish between natural and planted forest. It is also likely that planted forests will be established with seedlings grown from non-local seed. While eco-sourcing is an issue with some people and in some situations, it is probably not very pertinent in the forestry context because of the considerable eco-mixing

[10] In Penguin English Dictionary it is defined as "the number and diversity of distinct living species within the world or a particular environment".
But see — Faith, Daniel P., "Biodiversity", The Stanford Encyclopaedia of Philosophy (summer 2003 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2003/entries/biodiversity/- for dissertation on the subject.

that has already taken place over the past 200 years. It may be relevant if new forests are to be established near significant natural areas and/ or key ecological sites and this issue needs to be kept in mind.

K Sustainability

There is little doubt that planted indigenous forests, managed using Continuous Cover principles, are sustainable –not only from a timber production perspective but also as contributing to soil and water protection. However there are likely to be issues of pest control because planted indigenous forest not only improves habitat for native plants and animals but also introduced pests and predators. Good pest control strategies will be essential for planted indigenous forests. Certification of these forests by the Forest Stewardship Council, or similar body, will be important. A critical issue will be to create sustainable relationships between all values.

L Statutes

The issues here relate to the re-alignment of the Forests Act and the Resource Management Act and the obvious need to remove inconsistencies.

M Maori and Treaty Issues

Although Tāne's Tree Trust has some Maori members it would be good to have more because the Maori perspective on the establishment of new indigenous forests is lacking. Maori approach to the issues is more holistic than the European one which is more science based.

N Miscellaneous

Three minor but separate issues also need to be dealt with. The first is education and the point was well made that it is essential that a tertiary course on indigenous forestry continue to be taught at the School of Forestry. Indeed, as Continuous Cover Forestry becomes more main stream in New Zealand, the course should be expanded.

There is a need for the establishment of a set of definitions relating to the topic. This should not just be of terms related to forest taxation and matters relating to planning and the RMA, but also should cover indigenous forest management generally. A place to start might be with the joint FAO / IUFRO publication on terminology.[11]

Final, and above all there is a need for commitment to the advancement of the work required and to maintain its continuity.

[11] "Ford-Robertson F. C. 1983 Terminology of Forest Science, Technology, Practice and Products. Authorised by Joint FAO/IUFRO Committee on Forestry Bibliography and terminology. Society of American Foresters.

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Planting native trees offers many benefits to all New Zealanders. We know that it is possible to manage planted indigenous trees to improve biodiversity, protect riparian areas, enhance the landscape, store carbon and sustainably produce a range of forest products.

However, there are some legal and taxation impediments to the planting of native trees for productive purposes. research efforts have rarely been adequately funded and government policy has never been clear.

the challenge is to find the way forward in an inclusive fashion, using the best knowledge obtainable.

This is what Tãne's Tree trust is all about.

Tãne's Tree Trust
Native Trees for the Future

Trust Vision

"To see the majority of New Zealand landowners successfully planting and sustainably managing indigenous trees for multiple uses by 2020."

Trust Objectives

- Consolidating and advancing the state of knowledge of an increasing range of indigenous tree species — their establishment, growth, and productive use;
- Maximising the economic incentives for establishing indigenous trees by reducing establishment costs;
- Resolving legal and political obstacles currently serving as disincentives to the planting of indigenous trees;
- Building a network of knowledge-sharing amongst stakeholders.