Predicting wilding risk and avoiding court action

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Predicting wilding risk. The risk of wilding spread is predictable and calculable. We know the age when different species first produce cones and where the seed will go as it is only dispersed by wind. Most germinate within a few years (i.e., they produce a short-lived seed bank in the soil), and we know what controls seedling establishment (mainly browsing and vegetation competition). The fact that wilding risk is so predictable also makes it eminently manageable. This is why the Govt has been prepared to support control of wilding conifers to the tune of $100+million. We quantified the level of damage caused, and proved to them that a stitch in time will save nine.

Along with a few others, I used this knowledge to help develop a simple wilding risk calculator back in the early 1990s. Since then, I have visited the majority of sites where wildings exist, and often undertake desk-top calculations of the risk of spread. The risk calculator is currently being reviewed, and could be improved, but the fact that it is still officially recommended 30 years later is testament to its usefulness. It is very user-friendly and can be quickly completed. If a user knows the site to be planted and surrounding land (and fills in the risk calculator accurately) an estimate of wilding spread risk can be gained within minutes. Consequently, many aspiring tree growers have made planting decisions without needing to consult an 'expert'. D-fir is a very spread-prone species. Sales of its seed have plummeted since 2010, to the extent that the main seed orchards no longer exist. Why? More than likely it is because potential D-fir growers have calculated the risk of wilding spread and then decided not to proceed further, contributing to the decline in sales.

The current calculation tool is being reviewed, so hopefully any new version will be more accurate and just as easy to use. Watch this space.

Avoiding court action. At the last Wilding Pine Network conference in Taupo (2024), one of the contributions I recall best was delivered by Simon Hodgson. Simon runs a weed control business, Aoraki Tree and Scrub, but prior to that he was a lawyer in London for fifteen years.

At Taupo he addressed the question '*Can one sue a neighbour who is causing wilding conifers to invade your property?'* The simple answer is 'yes'. Any claimant would utilise one of two heads of tort law. The most applicable/suitable is the law of nuisance and the other which may be argued in tandem is negligence. Nuisance is the more applicable as it is land based, and the spread of wilding pines fits neatly and precisely into its domain. As Simon said, as far as he is concerned, 'the law is settled: the spreading of wilding pines by wind borne seed **will** constitute a nuisance.'

The law of nuisance, as applicable to wilding conifers, is further explained on the WPN website: https://wildingpinenetwork.org.nz/the-tort-of-nuisance-a-potential-avenue-to-leverage-wilding-pine-control/ Suffice to say, that any claimant will need to prove that the spread more likely than not originated from the defendant's property, plus bring evidence to establish the amount of loss or harm suffered. We

all know what the latter is – loss of productive farmland and water yield, changes to iconic visual landscapes, increased wildfire intensity etc. Relative to the former, the source of seed, this is where the calculator can play its part. Remember, that under civil law, the claimant only needs to prove that the spread came from the defendant's property on the balance of probabilities (i.e. 51% likely).

Simon thinks that whilst we have yet to see court action for damages caused by wilding spread in NZ, the chances are that we will in the near future. Hopefully the knowledge of the potential liability and likelihood of legal action may encourage owners of seed sources to act pre-emptively and remove seed sources in order to reduce their potential exposure to litigation. Just like layman use of the wilding risk calculator has encouraged potential planters of spread-prone species not to plant problematic trees in the first place. The more we spread the word - the more effective this might be to help us bring non-cooperative landowners on board relative to wilding control.