



# Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017

## Consenting and Compliance Guide - May 2018

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By 4Sight Consulting Limited

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<b>1</b>	<b>Introduction</b>	<b>1</b>
1.1	Overview of NES-PF guidance	1
1.2	Responsibility of local authorities to implement and enforce the NES-PF	2
1.3	Structure of this guide	3
<b>2</b>	<b>Relationship between the NES-PF, resource consents and existing use rights</b>	<b>4</b>
2.1	Relationship between the NES-PF and existing resource consents	4
2.2	Relationship between the NES-PF and resource consent applications being processed	6
2.3	Relationship between the NES-PF and other lawfully established activities	6
2.4	Certificates of compliance and existing use certificates	7
2.5	Relevance of the NES-PF to the application to change consent conditions	8
<b>3</b>	<b>Fixing charges for monitoring activities permitted under the NES-PF</b>	<b>9</b>
3.1	Overview of Part 3 of the NES-PF - local authorities may charge for monitoring permitted activities	9
3.2	Considerations for fixing charges and recovering costs	9
<b>4</b>	<b>A risk-based approach to compliance monitoring</b>	<b>12</b>
4.1	Compliance monitoring	12
4.2	A risk based approach to compliance monitoring	13
4.3	Monitoring plantation forestry activities	15
4.4	Developing a compliance strategy	16
<b>5</b>	<b>Guidance on administering certain NES-PF requirements and conditions</b>	<b>18</b>
5.1	General administration	19
5.2	Notice of plantation forestry activities	20
5.3	Management plans – request and review	22
5.4	Performance based conditions – assessing compliance	27
<b>6</b>	<b>Processing resource consents under the NES-PF</b>	<b>29</b>
6.1	Processing resource consents for controlled and restricted discretionary activities	29
6.2	Processing resource consents for discretionary activities	31
6.3	Principles of appropriate resource consent conditions	32
6.4	When resource consent is required under the relevant regional or district plan	33
6.5	Bundling of applications	33
6.6	Permitted baseline	34
	<b>Appendix A: List of Relevant Statutory Provisions from the RMA</b>	<b>35</b>

## **List of tables**

Table 1: Overview of requirements for written notice in the NES-PF.	20
Table 2: NES-PF management plans – roles and responsibilities.	23
Table 3: Definitions of material amendment in the NES-PF.	26
Table 4: Examples of performance based conditions in the NES-PF.	27
Table 5: Link between matters for discretion and appropriate consent conditions.	30

## **List of figures**

Figure 1: Overview of NES-PF guidance.	2
Figure 2: Generic risk matrix (source: Figure 2, Regional Sector Strategic Compliance Framework 2016-2018, unpublished).	14
Figure 3: Principles to guide strategic compliance programmes (source: Regional Sector Strategic Compliance Framework 2016-2018, unpublished).	17
Figure 4: Overview of the process and performance based conditions in the NES-PF.	18

# 1 Introduction

This document is part of a package of guidance developed by the Ministry for Primary Industries (MPI) to support the interpretation and implementation of the **Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017** (NES-PF). The NES-PF provides a nationally consistent set of standards to manage the environmental effects of *plantation forestry activities* under the Resource Management Act 1991 (RMA). The NES-PF applies to any forest of at least 1 hectare of continuous forest cover of *forest species* deliberately established for commercial purposes that will be or has been harvested<sup>1</sup>.

This guide provides operational guidance for councils and foresters to help them comply with and implement the NES-PF effectively and efficiently. In particular, this document provides guidance on:

- The responsibilities of local authorities to implement and enforce the NES-PF.
- Transitional considerations, including the relationship between the NES-PF, existing resource consents, and other existing uses rights.
- Fixing charges for the monitoring of certain *plantation forest activities* permitted under the NES-PF.
- A risk-based approach to compliance monitoring under the NES-PF.
- Administration of certain procedural requirements and performance-based conditions in the NES-PF.
- Processing resource consents when required under the NES-PF.

Note that terms that are defined in Regulation 3 of the NES-PF or in specific regulations have been identified in *italics* in this guide and are explained further as relevant.

## 1.1 OVERVIEW OF NES-PF GUIDANCE

The three main NES-PF guides available to download on the MPI website and supporting industry guidance are shown in Figure 1. There is also the option of downloading specific sections of the guides on the NES-PF guidance webpage<sup>2</sup>.

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<sup>1</sup> *Plantation forestry* is defined in the NES-PF as '**plantation forest or plantation forestry** means a forest deliberately established for commercial purposes, being (a) at least 1 ha of continuous forest cover of forest species that has been planted and has or will be harvested or replanted; and (b) includes all associated forestry infrastructure; but (c) does not include (i) a shelter belt of forest species, where the tree crown cover has, or is likely to have, an average width of less than 30 m; or (ii) forest species in urban areas; or (iii) nurseries and seed orchards; or (iv) trees grown for fruit or nuts; or (v) long-term ecological restoration planting of forest species; or (vi) willows and poplars space planted for soil conservation purposes'.

<sup>2</sup> Refer: <https://www.mpi.govt.nz/growing-and-harvesting/forestry/national-environmental-standards-for-plantation-forestry/n-es-pf-guidance/>

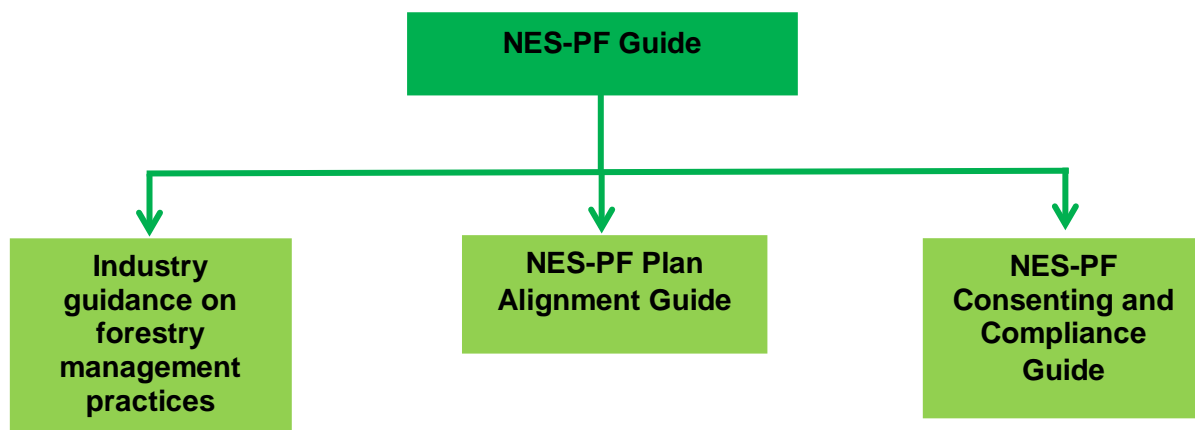


Figure 1: Overview of NES-PF guidance.

The [NES-PF User Guide](#) provides detailed information on the NES-PF provisions and conditions and is targeted at all implementers (councils) and users (foresters) of the NES-PF. The [NES-PF User Guide](#) should be referred to in conjunction with this guide to understand the specific regulations and permitted activity conditions in the NES-PF.

In addition to the guidance available on the MPI website, MPI has also worked with councils and the forestry industry to develop guidance on forestry management practices to support the implementation of the NES-PF. These 'Forest Practice Guides' provide specific guidance on common forestry management practices and can be used to meet the performance-based conditions in the NES-PF. They can also be used in the development of management plans required under the NES-PF. The Forestry Practice Guides will be available on the New Zealand Forest Owners Association website: <https://www.nzfoa.org.nz/>

## 1.2 RESPONSIBILITY OF LOCAL AUTHORITIES TO IMPLEMENT AND ENFORCE THE NES-PF

Sections 44A(7) and (8) of the RMA state:

*(7) Every local authority and consent authority must observe national environmental standards.*

*(8) Every local authority and consent authority must enforce the observance of national environmental standards to the extent to which their powers enable them to do so.*

In the context of the NES-PF, this means that regional councils and territorial authorities have a general obligation to:

- Understand the *plantation forestry activities* and effects regulated under the NES-PF, and where plan rules may continue to apply to these activities<sup>3</sup>
- Understand which council (regional council or territorial authority) has functions in relation to each of the NES-PF regulations (this is specified in the NES-PF)
- Receive notice of certain *plantation forestry activities*
- Decide how they will request, receive and review management plans when required for *earthworks, forestry quarrying and harvesting* (regional councils only)
- Fulfil their obligations as consent authorities when a resource consent is required under the NES-PF.

As a matter of good practice, regional councils and territorial authorities should also:

<sup>3</sup> The [NES-PF Plan Alignment Guide](#) provides detailed guidance on when plan rules may apply either because the NES-PF allows the plan rule to be more stringent or when the rule relates to an activity or effect not regulated under the NES-PF.

- Develop a clear understanding of the permitted activity conditions and regulations in the NES-PF that they have functions in relation to, in order to implement the NES-PF effectively and in a consistent manner
- Develop a risk-based approach to monitor compliance of *plantation forestry activities* regulated under the NES-PF
- Consider whether to charge for the monitoring of certain *plantation forestry activities* permitted under the NES-PF and, if so, fix reasonable charges in accordance with the relevant requirements in the RMA and Local Government Act 2002 (LGA)
- Develop systems and processes to effectively respond to the requirements in the NES-PF (e.g. notice of *plantation forestry activities*, management plans, risk management tools<sup>4</sup>).

### 1.3 STRUCTURE OF THIS GUIDE

This guide is structured as follows:

- **Chapter 2:** provides guidance on transitional considerations, including the relationship between the NES-PF, existing resource consents and existing use rights
- **Chapter 3:** provides guidance on charging for the monitoring of certain *plantation forestry activities* permitted under the NES-PF
- **Chapter 4:** provides guidance on how to take a risk-based approach to monitor compliance
- **Chapter 5:** provides guidance on the administration and implementation of certain procedural requirements and performance based permitted activity conditions in the NES-PF
- **Chapter 6:** provides guidance on processing resource consents when required under the NES-PF.

[Appendix A](#) provides a list of relevant statutory provisions in the RMA that are referred to in this guide.

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<sup>4</sup> The *Erosion Susceptibility Classification*, the *Wilding Tree Risk Calculator*, and the Fish Spawning Indicator.

## 2 Relationship between the NES-PF, resource consents and existing use rights

The NES-PF applies when a *plantation forestry activity* is undertaken. Regulation 5 (Application) sets out the *plantation forestry activities* regulated under the NES-PF and these are all defined in Regulation 3 (Interpretation) of the NES-PF.

At the commencement of the NES-PF, there are a range of existing *plantation forests* at various stages of the forestry lifecycle that will be operating under a range of different authorisations. Many *plantation forests* across New Zealand were established without the need to obtain a resource consent under the RMA. This may be because the establishment of the *plantation forest* pre-dated the RMA or because the activity was permitted under the relevant regional and district plans at the time it was established.

There are also *plantation forests* that hold existing resource consents that authorise their operation. The resource consents may relate to a number of *plantation forest activities* (as defined in the NES-PF) and may involve a mixture of land use consents under a district plan and regional permits under a regional plan<sup>5</sup>. For example, a resource consent may authorise the *harvesting* of a particular *plantation forest* as well as the *earthworks* required to construct the *forestry roads* and *forestry tracks* needed to fell and remove the harvested trees.

At the commencement of the NES-PF, foresters and councils need to be aware of the relationship between the NES-PF and:

- *Existing plantation forestry activities* that are authorised by existing resource consents; and
- *Existing plantation forestry activities* that do not have resource consents but are able to be carried out as of right (e.g. as permitted activities or pursuant to existing use rights).

This section provides guidance on those relationships based on the relevant provisions in the RMA (refer to [Appendix A](#) for these provisions in full).

### 2.1 RELATIONSHIP OF THE NES-PF WITH EXISTING RESOURCE CONSENTS

#### 2.1.1 Existing land use consents granted under a district plan

The relationship between existing land use consents granted under a district plan and the NES-PF is set out in section 43B(5) of the RMA - **land use consents granted before the NES-PF was gazetted (3 August 2017) prevail over the NES-PF**.

For example, if an owner of a *plantation forest* holds an existing land use consent for *forestry quarrying*, this resource consent will prevail over the NES-PF *forestry quarrying* regulations that are relevant to territorial authority functions, regardless of whether the resource consent is more stringent or lenient.

The NES-PF will apply to the *plantation forestry activity* as soon as the activity authorised by the land use consent has been completed and/or the resource consent has lapsed or expired. For example, the NES-PF will apply to *forestry quarrying* when the authorised extent of *forestry quarrying* has been undertaken and/or the duration of the land use consent has ended. The NES-PF will also apply to any activity or effect outside the scope of the existing resource consent.

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<sup>5</sup> Section 87 defines the types of resource consents under the RMA as follows: – *In this Act, the term resource consent means any of the following: (a) a consent to do something that otherwise would contravene section 9 or section 13 (in this Act called a **land use consent**); (b) a consent to do something that otherwise would contravene section 11 (in this Act called a **subdivision consent**); (c) a consent to do something in a coastal marine area that otherwise would contravene any of sections 12, 14, 15, 15A, and 15B (in this Act called a **coastal permit**); (d) a consent to do something (other than in a coastal marine area) that otherwise would contravene section 14 (in this Act called a **water permit**); (e) a consent to do something (other than in a coastal marine area) that otherwise would contravene section 15 (in this Act called a **discharge permit**).*



Some foresters may hold land use consents granted under a district plan that authorise a *plantation forestry activity* or multiple *plantation forestry activities* in perpetuity<sup>6</sup>. For example, the land use consent may authorise *afforestation* and *replanting* of a *plantation forest* on a specified piece of land over multiple forestry cycles with no specified end date. In this scenario, the forester could continue to rely on the land use consent without having to meet the relevant requirements in the NES-PF provided:

- They comply with all the relevant land use consent conditions.
- The activity remains within the scope of the land use consent.

The *plantation forestry activity* authorised by the land use consent may still need to comply with the regulations of the NES-PF within regional council functions (if relevant).

## 2.1.2 Existing coastal, water or discharge permits, and regional land use consents.

Sections 43B(6)(a) and (6A) of the RMA set out the relationship between NES and the following types of resource consents:

- **Coastal, water and discharge permits** – these are resource consents to do something that would otherwise contravene sections 12 (restrictions on use of coastal marine area), 14 (restrictions relating to water) and 15 (discharges of contaminants) of the RMA. In relation to *plantation forestry*, these types of permits are most likely to authorise *plantation forestry activities* that involve the discharge of *sediment*, *slash* or stormwater into water (including coastal water) or onto land in circumstances where it may enter water.
- **Regional land use consents** – these are resource consents to do something that would otherwise contravene sections 9 (restrictions on the use of land) or 13 (restrictions on certain uses of beds of lakes and rivers) of the RMA. In relation to *plantation forestry*, these types of consents are most likely to relate to *earthworks* and *river crossings*, or where the regional plan requires resource consent for soil conservation purposes.

**The regional consents outlined above granted before the NES-PF was gazetted (3 August 2017) will prevail over the NES-PF.** This relationship applies until:

- The consent expires<sup>7</sup>; or
- A review of the conditions of the permit or consent under section 128(1)(ba)<sup>8</sup> of the RMA results in some or all of the NES-PF standards prevailing over the permit or consent.

A forester can continue to rely on regional resource consents that prevail over the NES-PF provided that the activity remains within the scope of the consent. For example, the NES-PF will apply once the authorised extent of *earthworks* has been undertaken and the forester is proposing additional *earthworks* outside the scope of the regional land use consent.

The *plantation forestry activity* authorised by the discharge permits and regional land use consents may still need to comply with the NES-PF regulations that are within territorial authority functions (if relevant).

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<sup>6</sup> Section 123(b) states that the period to which a land use consent is granted is unlimited unless otherwise specified in the consent.

<sup>7</sup> Note that some resource consents (e.g. earthworks consents that contravene section 9 of the RMA) may have an unlimited duration (pursuant to section 123 of the RMA).

<sup>8</sup> Section 128(1)(ba) - A consent authority may, in accordance with section 129, serve notice on a consent holder of its intention to review the conditions of a resource consent, in the case of a coastal, water, or discharge permit, or a land use consent granted by a regional council, when relevant national environmental standards or national planning standards have been made.

## 2.2 RELATIONSHIP OF THE NES-PF WITH RESOURCE CONSENT APPLICATIONS BEING PROCESSED

Some resource consents will have been granted after the NES-PF was gazetted (3 August 2017) and prior to the NES-PF coming into force. The relationship between these resource consents and NES-PF is set out in section 43B(7) of the RMA. It is determined by the date that the decision whether to notify the application (section 95-95G of the RMA) was made:

- Decision on notification of the application was made **prior to 3 August 2017** - the **resource consent prevails over the NES-PF**; or
- Decision on notification of the application was made **after 3 August 2017** - the **NES-PF prevails over the resource consent**. In this situation, the *plantation forestry activity* was able to operate under the resource consent until 1 May 2018, but the activity now needs to be reconsidered under the NES-PF requirements.

## 2.3 RELATIONSHIP OF NES-PF WITH OTHER LAWFULLY ESTABLISHED ACTIVITIES

Existing use rights are provided for under the RMA through sections 10, 10A, 10B (for activities managed under a district plan) and section 20A (for activities managed under a regional plan). These rights apply to existing uses and activities that:

- Are lawfully established as a permitted activity or could have been lawfully carried out without a resource consent; and
- Now require a resource consent as a result of a rule in a plan or proposed plan becoming operative or taking legal effect.

Section 43B(9) of the RMA states that, where a NES requires a resource consent to be obtained for an activity, sections 10, 10A, 10B and 20A(2) apply to the activity as if the NES was a rule in a plan that had become operative. This guidance deals with existing use rights under district and regional plans separately as the consenting implications for *plantation forestry activities* are different under each:

- Existing use rights for the use of land under section 10 of the RMA continue, provided the effects of the activity are the same or similar in character, intensity, and scale to those which existed before the rule became operative or the proposed plan was notified (and the land use is not discontinued for longer than 12 months).
- Existing use rights for regional activities under section 20A(2) of the RMA are limited in duration and a resource consent must be applied for within 6 months of a rule becoming operative when that rule requires a resource consent for that activity.

This section does not focus on existing use rights under sections 10A and 10B of the RMA as *plantation forestry activities* do not typically involve using the surface of lakes and rivers or the construction of buildings.

### 2.3.1 Existing use rights for land use under district plans – section 10

Section 10 of the RMA addresses existing use rights for the use of land managed under a district plan. Under section 10(1)(a) of the RMA, land may be used in a manner that contravenes a rule in a district plan or proposed district plan (i.e. a territorial authority regulation in the NES-PF) if:

1. The use was lawfully established before the rule became operative or the proposed plan was notified – i.e. the use of land for the *plantation forestry activity* must be lawfully established before the NES-PF comes into force; and
2. The effects of the use are the '*same or similar in character, intensity and scale to those which existed before the rule became operative or the proposed plan was notified*'; and

3. The use of land has not been discontinued for a continuous period of more than 12 months after the NES-PF comes into force, subject to the exception in section 10(2) of the RMA<sup>9</sup>.

There is extensive case law on existing use rights under the RMA, which should be considered when applying these provisions to *plantation forestry activities* regulated under the NES-PF. The case law confirms that it is the responsibility of the person using the land to demonstrate they have existing use rights.

### 2.3.2 Existing use rights for activities under regional plans – section 20A

Section 20A of the RMA addresses existing use rights for activities managed under a regional plan. Section 20A(2) of the RMA applies to certain **existing lawful activities** that require resource consent as a result of a regional rule becoming operative (i.e. resource consent is required due to a regional council regulation in the NES-PF).

Section 20A(2) enables these activities to continue provided the following requirements are met:

1. Prior to the NES-PF coming into force:
  - The existing activity was a permitted activity or otherwise could have been lawfully carried on without a resource consent
  - The existing activity was lawfully established
2. The effects of the activity are the ‘*same or similar in character, intensity, and scale to the effects that existed before the rule became operative*’; and
3. The person carrying out the activity has applied for a resource consent from the appropriate consent authority within six months of the NES-PF coming into force, and the application has not been decided, or any appeals are still to be determined.

Section 20A(2) therefore provides a six-month window from 1 May to 1 November 2018 for foresters to apply for any regional resource consents that are required as a result of the NES-PF coming into force. Resource consents do not need to be granted within the six-month timeframe – the application must be lodged prior to 1 November 2018 and the activity can continue operating past the six-month timeframe while the application is being processed.

## 2.4 CERTIFICATES OF COMPLIANCE AND EXISTING USE CERTIFICATES

### 2.4.1 Section 139 – Certificates of compliance

Section 139 of the RMA allows a person to request that a consent authority issue a certificate of compliance to confirm that an activity ‘*could be done lawfully in a particular location without a resource consent*’. Some foresters may hold a certificate of compliance to confirm that the *plantation forestry activity* was permitted at the time the activity commenced.

Once granted, a certificate of compliance is treated in the same manner as a resource consent under the RMA that contains the conditions specified in the applicable NES or plan (section 139(10) of the RMA). However, certificates of compliance issued prior to the NES-PF coming into force will not necessarily prevail over the NES-PF as these are subject to the standard existing use right provisions in the RMA. This is due to the following RMA provisions:

- Section 139(11) states that a certificate of compliance is to be treated as resource consent **subject to sections 10, 10A and 20A(2) of the RMA**. These sections determine

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<sup>9</sup> Under section 10(2) an activity can still have existing use rights after the use of land has been discontinued for a continuous period of more than 12 months when: a) an application has been made to the territorial authority within the first two years of the activity first being discontinued; and b) the territorial authority has granted an extension.

the status of a lawfully established use of land or activity when a rule that has been notified or become operative requires a resource consent for that activity

- Section 43B(9) states that if NES require a resource consent to be obtained for an activity, sections 10, 10A, 10B, and 20A(2) apply to the activity as if the standard were a rule in a plan that had become operative.

Councils may also receive and consider applications for certificates of compliance under section 139 of the RMA to provide written confirmation that the *plantation forestry activity* can be undertaken lawfully without resource consent. Foresters may choose to do this to receive confirmation that a *plantation forestry activity* they are planning to undertake is permitted under the NES-PF.

#### 2.4.2 Section 139A – Existing use certificates

Section 139A of the RMA allows consent authorities to issue an existing use certificate to confirm that an activity was allowed by either sections 10, 10A or 20A on the date the consent authority issues the certificate. These certificates must specify the character, intensity and scale of the land use or activity and must also describe the period the activity is allowed if section 10A or 20A apply.

The purpose of these certificates is to confirm that the activity either has existing use rights under sections 10 and 10A or was an existing lawful activity under section 20A of the RMA on the date that the council issues the certificate. [Section 2.3](#) of this guide provides more information on the existing use rights provisions in the RMA and how these apply to *plantation forestry activities*.

## 2.5 RELEVANCE OF THE NES-PF TO APPLICATION TO CHANGE CONSENT CONDITIONS

Foresters may apply, under section 127 of the RMA, to change or cancel the conditions of resource consents they hold for *plantation forestry activities*, which were granted prior to the commencement of the NES-PF. A section 127 application to change the condition of a forestry consent will be processed in the same way as they were prior to the NES-PF coming into force – the difference being that the NES-PF will be a relevant matter to consider under section 104(1)(b)(i). This process can be summarised as follows:

- The activity status of the application will be discretionary under section 127(3)(a), regardless of the activity status of the consent or the activity status under the NES-PF
- Councils will assess the effects of the change or cancellation of conditions in accordance with sections 88 to 121 of the RMA (section 127(3)(b))
- Councils are required to have regard to the relevant provisions of a NES under section 104(1)(b)(i) of the RMA.

For example, the NES-PF could be considered as part of the assessment of the 'permitted baseline' when considering a section 127 application that relates to a *plantation forestry activity*. Section 104(2) of the RMA enables the consent authority to disregard an adverse effect of the change or cancellation of conditions if the NES-PF permits the activity with that effect. [Section 6.6](#) of this guide provides more guidance on assessing resource consents under the NES-PF and the application of the 'permitted baseline'.

## 3 Fixing charges for monitoring activities permitted under the NES-PF

### 3.1 OVERVIEW OF PART 3 OF THE NES-PF - LOCAL AUTHORITIES MAY CHARGE FOR MONITORING PERMITTED ACTIVITIES

The RMA was amended by the Resource Legislation Amendment Act 2017 to enable councils to charge for monitoring specified permitted activities in a NES, where the NES expressly empowers them to do so (section 43A(8) of the RMA). Councils may fix charges payable by the person carrying out the permitted activity for the monitoring of that activity, if the NES empowers them to charge for it (section 36(1)(cc) of the RMA).

The NES-PF is the first NES that enables councils to charge for the costs of monitoring permitted activities. This is enabled through Regulation 106 of the NES-PF which states:

***106 Local authorities may charge for monitoring permitted activities***

*A local authority responsible for monitoring any of the following permitted activities may charge for its monitoring of those activities:*

- (a) regulation 24 (earthworks)*
- (b) regulation 37 (river crossings)*
- (c) regulation 51 (forestry quarrying)*
- (d) regulation 63(2) (harvesting).*

Regional councils have functions in relation to these activities<sup>10</sup>. Regional councils are not required to fix charges for monitoring these permitted activities under the NES-PF but may choose to do so.

The NES-PF is based on a predominantly permitted activity regime and councils may be required to monitor these activities to confirm compliance and/or ensure there are no significant adverse environmental effects from *plantation forestry activities*. Allowing councils to charge to recover their monitoring costs will help councils fulfil their obligations to observe the NES-PF and enforce that observance (sections 44A(7)-(8) of the RMA).

The four *plantation forestry activities* that councils can charge permitted activity monitoring fees have the highest risk of adverse environmental effects when conditions are not complied with. Three of these activities also require the preparation of management plans (*earthworks* and *forestry quarrying* (above specified thresholds) and *harvesting*). Monitoring compliance with a management plan may require a site audit to confirm that management practices being used on site are consistent with that stated in the management plan. Therefore, the NES-PF allows councils to charge for the monitoring of these *plantation forestry activities*.

### 3.2 CONSIDERATIONS FOR FIXING CHARGES AND RECOVERING COSTS

#### 3.2.1 Fixing administrative charges

There is a specific process for councils to follow when fixing charges under the RMA and Local Government Act 2002 (LGA). This is based on the statutory requirements in section 36 (administration charges) and 36AAA (criteria for fixing administrative charges) of the RMA, and sections 83 (special consultative procedure) and 150 (fees may be prescribed by bylaw) of the LGA. The same considerations and processes apply when setting charges for monitoring permitted activities under the NES-PF. Some of the key points to consider are:

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<sup>10</sup> Territorial authorities have functions in relation to the notice requirement for harvesting but this is unlikely to require on-site monitoring to confirm compliance.

- Section 36 of the RMA states that fees fixed under section 36(1)(cc) must be set:
  - In the manner set out in section 150 of the LGA
  - Using the special consultative procedure in section 83 of the LGA
  - In accordance with section 36AAA of the RMA.
- A council must have regard to the criteria in section 36AAA of the RMA when fixing charges. These include, that the sole purpose of the charge is to recover the reasonable costs incurred by the council.
- Section 150 of the LGA states that fees and charges may be prescribed using the special consultative procedure or through a bylaw. It is generally good practice to use the special consultative procedure to set charges and align this with the long-term plan/annual plan process under the LGA.

The key principle is that councils should fix charges for monitoring specified permitted activities in the NES-PF in the same way as it sets charges for other functions referred to in section 36(1) of the RMA. For example, council hourly rates should be consistent with those set for monitoring activities that hold resource consent (section 32(1)(c)). The fixed charges councils set to monitor permitted *plantation forestry activities* in accordance with Regulation 106 will be monitored as part of the NES-PF Monitoring and Evaluation Plan.

Section 36AAB(4) of the RMA requires councils to publish on a publicly accessible website an up-to-date list of charges they have fixed under section 36. This ensures the cost of administrative processes is visible to anyone who may be liable for fixed charges.

### 3.2.2 Monitoring of permitted activities

Neither the RMA nor the NES-PF specifies that monitoring permitted activities is a function of councils. For the purposes of Regulation 106, monitoring needs to be directly related to determining whether the activity is complying with the relevant permitted activity conditions in the NES-PF.

The NES-PF includes a range of procedural and performance based permitted activity conditions that are intended to work together (discussed further in [section 5](#) of this guide). The on-site monitoring of certain *plantation forestry activities* will be required in some circumstances to confirm compliance with:

- Procedural requirements – e.g. whether the person is implementing the management practices outlined in their management plan
- Performance based conditions – e.g. sediment discharges from *harvesting* must not give rise to certain adverse effects in receiving waters, *slash* is deposited away from waterbodies etc.

It is the on-site monitoring of *earthworks*, *river crossings*, *forestry quarrying* and *harvesting* that should be the focus of Regulation 106. The monitoring of the permitted activities specified in Regulation 106 will not cover the time spent prior to the permitted activity commencing, such as:

- Reviewing management plans to determine whether they are complete or to better understand the activity (although reviewing the management plan may inform and enable a more focused and efficient site visit, refer to [section 5.3](#) of this guide for more details on management plan review); and
- Determining activity status of a particular *plantation forestry activity*, i.e. checking documentation against NES-PF requirements and conditions.

Councils may choose to set fixed charges for site visits to monitor these activities or provide a scale of charges which will enable it to recover its actual and reasonable costs for monitoring that activity. The approach councils take to set fixed charges to monitor permitted

*plantation forestry activities* in accordance with Regulation 106 will be monitored as part of the NES-PF Monitoring and Evaluation Plan.

### 3.2.3 Recovering actual and reasonable costs

Where the fixed charge for the monitoring of a permitted activity is *'inadequate to enable a local authority to recover its actual and reasonable costs'*, section 36(5) of the RMA allows councils to require the person undertaking the activity to pay an additional charge. In setting the amount of additional charge, a council must have regard to the criteria in 36AAA(2)–(4) of the RMA.

These costs are charged at the end of the completed compliance monitoring activity and are calculated based on the reasonable costs of monitoring minus any fixed charge. All costs, whether fixed or additional charges, should be clearly described in the invoice provided to the forester, with council staff time clearly recorded and any disbursements itemised.

The ability to require foresters to pay additional charges to recover the actual and reasonable costs of monitoring permitted activities under the NES-PF may be useful in the following situations:

- The *plantation forestry activity* is a particularly large operation and it takes longer to visit certain high-risk or sensitive areas across the site to confirm compliance
- Non-compliance with a permitted activity condition is detected and more time is spent on site discussing this with the forester
- More time is required on site than usual to audit management practices against the relevant management plan.

Additional charges are subject to the rights of objection and appeal (sections 357B to 358 of the RMA) but fixed fees are not (section 36(7) of the RMA).

## 4 A risk-based approach to compliance monitoring

Compliance monitoring is critical to achieving the purpose of the RMA – promoting the sustainable management of natural and physical resources. The NES-PF is based on an approach where *plantation forestry activities* are generally permitted where the relevant permitted activity conditions are complied with. A resource consent will be required where the risks are higher due to site-specific factors or where permitted activity conditions cannot be complied with, to allow for site-specific oversight and a more tailored response to particular issues.

This risk-based approach and the NES-PF conditions encourage foresters to take a proactive approach to identify site specific risks and implement appropriate management practices to respond to those risks. It also places a greater emphasis on councils adopting proactive compliance monitoring programmes for permitted activities to ensure foresters are complying with the NES-PF. A risk-based approach to compliance monitoring that focuses on activities with a higher risk of non-compliance, and/or a greater risk to the environment in the event of non-compliance, is the most efficient and effective approach.

Councils undertake compliance monitoring of both permitted activities and resource consents through their duty to observe and enforce policy statements and plans (section 84 of the RMA), monitor the environment (section 35(2)(A) of the RMA), and monitor resource consents in their region or district (section 35(2)(d) of the RMA). The Ministry for the Environment has developed draft guidelines to assist councils with their general compliance, monitoring and enforcement (CME) responsibilities under the RMA<sup>11</sup>.

This guidance is focused on how councils can take a risk-based approach to monitor *plantation forestry activities* under the NES-PF. This guidance draws on the approach to compliance monitoring promoted in the Ministry for the Environment's CME guidelines and the Regional Sector Strategic Compliance Framework 2016-2018<sup>12</sup>. This Framework was developed for the regional sector and advocates a strategic approach to compliance and enforcement so that councils focus their efforts on 'important problems' based on a range of risk-based factors.

The approaches that councils take to monitor compliance under the NES-PF and the levels of compliance with the NES-PF will be monitored as part of the NES-PF Monitoring and Evaluation Plan. This recognises that compliance with the NES-PF is important to ensure environmental outcomes associated with *plantation forestry activities* managed under the NES-PF are maintained or improved.

### 4.1 COMPLIANCE MONITORING

Compliance monitoring allows councils to identify whether permitted activity conditions and resource consent conditions are being complied with to allow for appropriate action to be taken. Compliance monitoring activities are likely to cover 'the four Es'<sup>13</sup>:

- **Engage** to provide proactive advice on what compliance means
- **Educate** on actions required to achieve compliance
- **Enable** users to comply
- **Enforce** by using available enforcement tools to enable positive behaviour change.

Enforcement responses range from informal direction to address non-compliance, or more formal enforcement proceedings under the RMA. One of the key benefits of compliance

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<sup>11</sup> Refer: <http://www.mfe.govt.nz/consultation/draft-best-practice-guidelines-compliance-monitoring-and-enforcement-under-rma>

<sup>12</sup> Developed by the Compliance and Enforcement Special Interest Group which includes representatives from all regional councils and unitary authorities. The purpose of the Strategic Compliance Framework is 'To assist councils in using a consistent approach to developing strategic compliance programmes and a range of interventions to fix important problems'.

<sup>13</sup> Described in more detail in the Regional Sector Strategic Compliance Framework 2016-2018.



monitoring is enabling early detection of any adverse environmental effects resulting from non-compliance. This is particularly important for larger scale or higher risk *plantation forestry activities* that have the potential to cause significant adverse effects where there is non-compliance with the NES-PF.

Under the NES-PF, compliance monitoring can be used to:

- Undertake a site audit of a *plantation forest* to confirm the management practices are consistent with those described in the management plans for *earthworks, forestry quarrying* and *harvesting*.
- Confirm compliance with the performance based (i.e. outcome focused) conditions in the NES-PF, which will generally need to be assessed on site. For example, this may involve checking that *river crossings* and *forestry infrastructure* is constructed in accordance with the permitted activity conditions and is structurally sound, assessing the receiving environment for any evidence of unanticipated adverse effects (e.g. a conspicuous change in visual clarity of the receiving water body due to *sediment* discharges from *earthworks*).
- Confirm that NES-PF timeframes have been met. For example, whether exposed areas of soil from *mechanical land preparation* have been stabilised no later than 30 November or 31 May, whichever is the sooner (Regulation 74(5)), or whether a *slash trap* has been cleared of debris by 20 working days after a 5% Annual Exceedance Probability (AEP) flood event (Regulation 86(1)(b)).
- Respond to complaints and investigate environmental incidents.
- Identify where enforcement action needs to be taken to respond to non-compliance.

Compliance monitoring under the NES-PF should have a clear purpose to be efficient and effective. This should ideally be informed by an underlying compliance monitoring strategy (discussed further in [section 4.4](#) of this guide).

Compliance monitoring of *plantation forestry activities* will involve checking that these activities are carried out in a manner that complies with all applicable NES-PF permitted activity conditions (including management plans) and any resource consent conditions. This will generally involve a combination of:

- Site visits – to assess compliance with the performance-based conditions in the NES-PF (e.g. the effects of sediment discharges in receiving waters).
- Desktop audits – to assess compliance with the procedural based conditions in the NES-PF (e.g. confirming the management plan includes the relevant details required in Schedule 3 and 4).

[Section 5](#) of this guide provides guidance on the performance and procedural conditions in the NES-PF.

## 4.2 A RISK-BASED APPROACH TO COMPLIANCE MONITORING

A risk-based approach to compliance monitoring is an effective way of targeting activities that have a higher risk of incidences of non-compliance, or where non-compliance will have a more severe risk of harm to people and the environment. A risk-based approach to compliance monitoring has the following benefits:

- Enables limited resources to be prioritised according to the level of risk of adverse effects on the environment.
- Targets activities and areas where non-compliance is most likely.
- Enables councils to respond quickly to changing and emerging risks.
- Provides for robust and transparent decision-making.
- Ensures a fair and consistent approach to compliance monitoring.

In the context of compliance monitoring, a risk-based assessment takes into account the likelihood of non-compliance occurring and the risk of harm to people and adverse effects on the environment from that non-compliance. These two factors form a generic risk matrix as illustrated in Figure 2, sourced from the Regional Sector Strategic Compliance Framework 2016-2018.

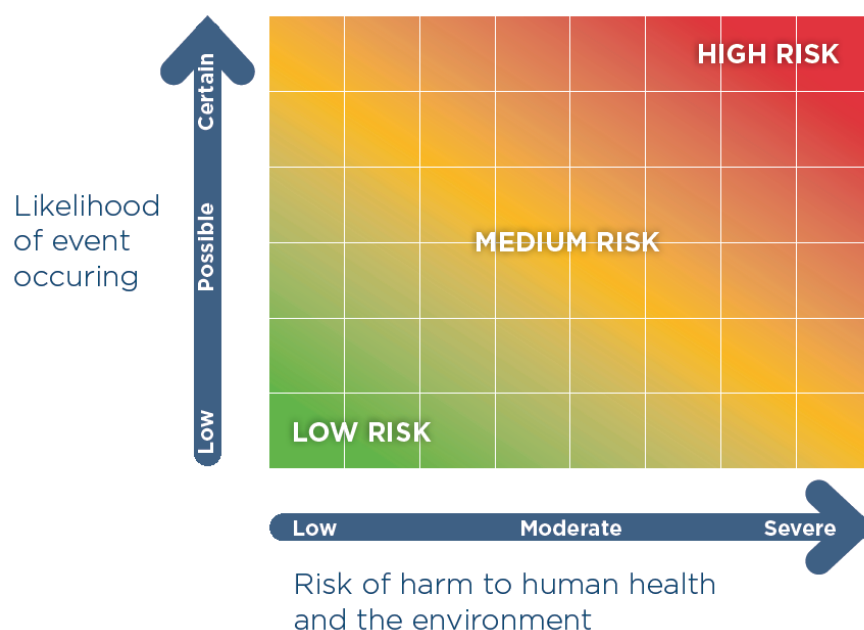


Figure 2: Generic risk matrix (source: Figure 2, Regional Sector Strategic Compliance Framework 2016-2018, unpublished).

The level of risk in the risk matrix should be used to prioritise compliance monitoring activities and determine the most appropriate compliance monitoring approach, including timing, frequency and response. A risk-based approach to compliance monitoring under the NES-PF enables councils to assess:

- **The site-specific risks of particular *plantation forestry activities*** – the nature and scale of the *plantation forestry activity*, *Erosion Susceptibility Classification* (ESC) zoning, and sensitivity of the receiving environment will assist councils to assess site-specific risks under the NES-PF.
- **How frequently a *plantation forestry activity* should be monitored** – monitoring of *plantation forestry activities* should generally occur at key stages (e.g. immediately post-harvest) or following the submission of a management plan to councils. Higher risk sites may warrant a regular compliance monitoring programme, potentially extending to annual site visits for larger sustained yield *plantation forests* where *earthworks* or *harvesting* operations are ongoing.
- **The appropriate type of monitoring** – high risk sites should be prioritised for on-site audits at key stages of the *plantation forestry activity* cycle. Conversely, low risk sites will generally not warrant a site visit and a desk-top audit may also be sufficient for many *plantation forestry activities*.

Councils should consider how they can achieve what they need from compliance monitoring while also aiming to minimise disruptions to foresters. Discussing the proposed monitoring frequency and approach of any regular compliance monitoring programme with the forester will help ensure that it is workable from their perspective and ensure that compliance staff achieve what they need on site. For example, confirming site visits in advance will help ensure that the health and safety requirements for visitors can be planned for and met. Discussing the compliance monitoring approach with foresters may also help to encourage compliance and enable more efficient and targeted site visits.

## 4.3 MONITORING PLANTATION FORESTRY ACTIVITIES

### 4.3.1 Monitoring permitted activities

The NES-PF permits *plantation forestry activities* where the risks are lower and permitted activity conditions can adequately manage actual and potential adverse environmental effects. While there is no specific obligation in the RMA to monitor permitted activities, undertaking this function in some way is recognised as good practice both for activities permitted under regional and district plans, and activities permitted under NES. This reflects the obligations on councils to observe NES and enforce that observation to the extent that their powers enable them to do so (section 44A(7) and (8) of the RMA).

Councils should consider the need for proactive and targeted compliance monitoring programmes for *plantation forestry activities* permitted under the NES-PF based on the level of risk. This is particularly important for some *plantation forestry activities* where the permitted activity conditions in the NES-PF are reasonably extensive, and non-compliance may result in adverse environmental effects.

*Earthworks* and *forestry quarrying* (above specified thresholds) and *harvesting* are required to have a management plan in place that meets the requirements of Schedules 3 and/or 4 and undertake the activity in accordance with that management plan, to be permitted. Assessing compliance of these activities will generally involve a combination of:

- Desktop audits - i.e. that the management plan includes the details required in the relevant schedule; and
- A site audit - i.e. to confirm management practices on-site are consistent with those described in the management plan.

Compliance staff can also use the site visit as an opportunity to assess the receiving environment to determine whether the management practices on-site are achieving compliance with the performance-based conditions in the NES-PF. An initial review of the management plan should inform any on-site monitoring so that the visit can focus on higher risk areas within the *plantation forest*.

### 4.3.2 Monitoring resource consents

Section 35(2)(d) of the RMA requires every council to monitor the exercise of resource consents that are given effect to in its region or district. The requirement to monitor individual consents and the monitoring frequency will be determined by the nature and scale of the *plantation forestry activity*, the reasons that resource consent was required, and the type of resource consent conditions. Some resource consents required under the NES-PF will require minimal monitoring (if any), while other resource consents will require regular site visits to monitor compliance with consent conditions. Each council will determine how to monitor consents for *plantation forestry activities* in their region/district which should be informed by a risk-based approach.

Monitoring of resource consents that authorise *plantation forestry activities* will generally involve an assessment of:

- **Compliance with consent conditions** - most resource consents are granted subject to consent conditions and some of these will warrant monitoring to confirm compliance. To assist with further compliance monitoring, it is good practice to identify the nature and frequency of monitoring required for any consent conditions imposed (e.g. those that do not require monitoring, conditions that require one-off monitoring, and those that require ongoing monitoring).
- **The effectiveness of consent conditions** - i.e. are the conditions imposed having the desired environmental result, what is the impact of the consented activity on the environment.

## 4.4 DEVELOPING A COMPLIANCE STRATEGY

Councils may choose to develop a compliance strategy for *plantation forestry activities* under the NES-PF – either as a subset of their overall RMA compliance strategy or potentially a standalone strategy. This can be useful to clearly set out how the council will carry out compliance monitoring in relation to the NES-PF and enable this to be undertaken in a targeted, efficient and consistent manner.

A specific compliance monitoring strategy for the NES-PF is likely to be more beneficial for regional councils with large numbers of *plantation forests* in their region. For these councils, developing a NES-PF compliance monitoring strategy will help ensure that all compliance monitoring activities and decisions are:

- **Consistent** – to ensure a fair outcome for all those affected. As the NES-PF is a national set of standards, foresters will be expecting that compliance is assessed and dealt with in a consistent manner.
- **Cost-effective** – an established process will enable compliance activities and enforcement decisions to be made efficiently, benefiting both foresters and councils.
- **Transparent** – an established, documented process to monitor *plantation forestry activities* under the NES-PF that is communicated to foresters will enable them to understand how activities will be monitored and non-compliance will be dealt with. A transparent approach will also encourage compliance and promote an upfront assessment of risk.
- **Proportionate** – any response to non-compliance needs to be proportionate to the circumstances and the adverse effects on the environment. A compliance strategy will enable responses to non-compliance to be consistently matched with the severity of the event.

For general guidance on developing a compliance strategy, refer Part 2 of the Ministry for the Environment's CME guidelines<sup>14</sup>. These guidelines recommend that the principles outlined in Figure 3 below, from the Compliance and Enforcement Special Interest Groups' Regional Sector Strategic Compliance Framework, should guide all council compliance, monitoring and enforcement activities, and be included in RMA compliance strategies. These principles represent good practice and are relevant to compliance monitoring strategies developed for the NES-PF.

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<sup>14</sup> Refer: <http://www.mfe.govt.nz/publications/rma/draft-best-practice-guidelines-compliance-monitoring-and-enforcement-under-rma>

### ***Principles to guide compliance, monitoring and enforcement activities***

#### **Transparency**

We will provide clear information and explanations to the regulated community about the standards and requirements for compliance. We will ensure the community has access to information about industry environmental performance, as well as actions taken by us to address environmental issues and non-compliance.

#### **Consistency of process**

Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure our staff have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.

#### **Fairness and proportionality**

We will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably, and ensure our decisions are appropriate to the circumstances and that our interventions and actions will be proportionate to the risks posed to people and the environment and the seriousness of the non-compliance.

#### **Based in evidence**

We will use an evidence-based and informed approach to our decision-making. Our decisions will be informed by a range of sources, including sound science and information received from other regulators, members of the community, industry, and interest groups.

#### **Collaborative approach**

We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our regions. We will consider the public interest and engage with the community, those we regulate, and central government, to explain and promote environmental requirements and achieve better community and environmental outcomes.

#### **Legal, accountable and ethical**

We will conduct ourselves lawfully, impartially and in accordance with these principles, as well as relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

#### **Outcomes-focused**

We will focus on the most important issues and problems to achieve the best environmental outcomes. We will target our regulatory intervention at poor performers and illegal activities that pose the greatest risk to the environment. We will apply the right tool for the right problem at the right time.

*Figure 3: Principles to guide strategic compliance programmes (source: Regional Sector Strategic Compliance Framework 2016-2018, unpublished).*

## 5 Guidance on administering certain NES-PF requirements and conditions

The NES-PF includes a mixture of ‘performance based’ (i.e. outcome focused) conditions and ‘process based’ (i.e. procedural focused) conditions. These conditions work together so that councils and foresters understand the practical considerations and management measures that need to be undertaken under the NES-PF to achieve good environmental outcomes. Figure 4 demonstrates the relationship between the performance and process-based conditions in the NES-PF.

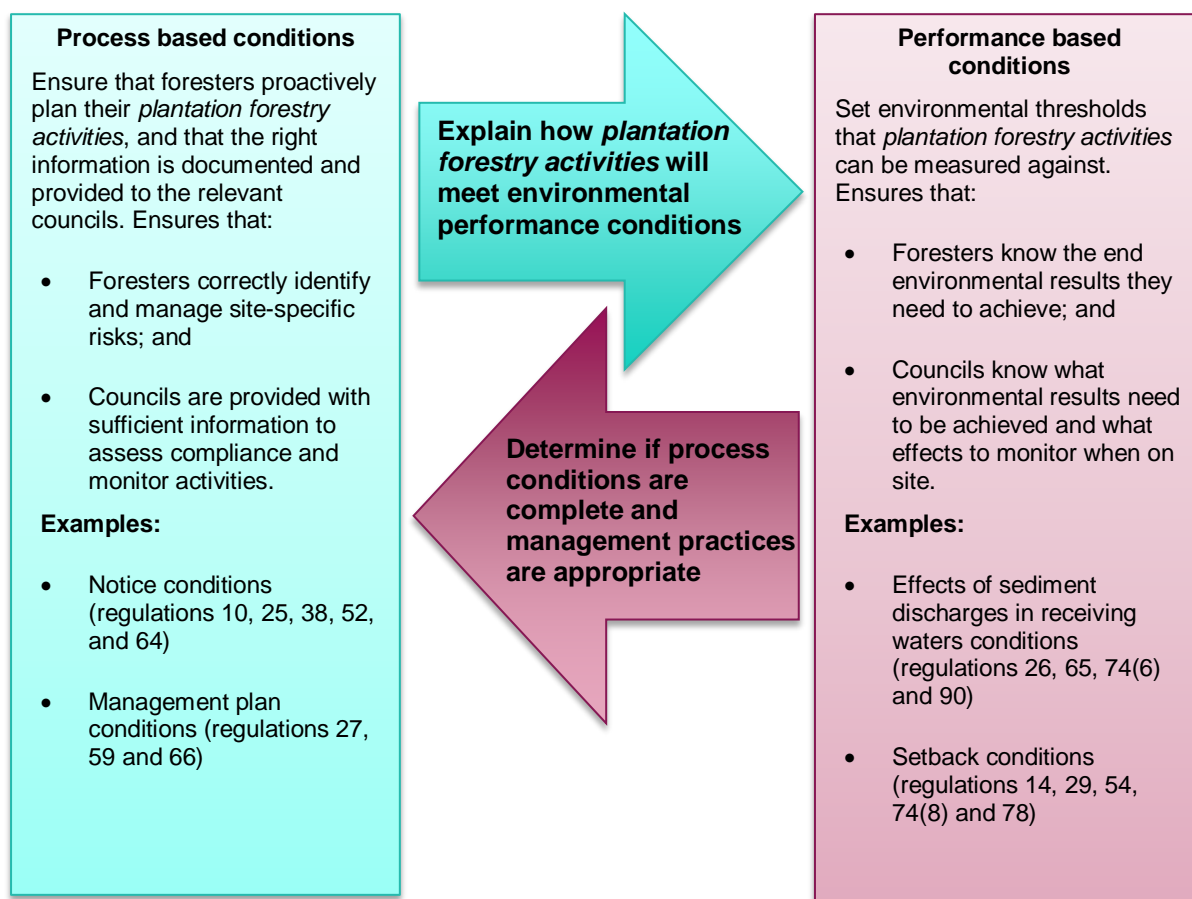


Figure 4: Overview of the process and performance based conditions in the NES-PF.

This section provides guidance on how to administer the NES-PF from:

1. A practical perspective - making sure the right processes and templates are in place to administer the NES-PF efficiently and effectively; and
2. An operational perspective - how to assess compliance with key permitted activity conditions.

This section includes guidance on:

- **General administration of the NES-PF** – council point of contact, acknowledging receipt of NES-PF documents, potential templates.
- **Notice of activities** – when notice is required, what is required in the notice, options for dealing with non-compliance.
- **Management plans** – when regional councils can request management plans, deciding when to request and review management plans, how to review and audit management plans.

- **Performance based activity conditions** – how to assess the performance based permitted activity conditions in the NES-PF to ensure the desired environmental outcome is achieved.

The permitted activity conditions covered in this section are primarily the functions of regional councils, although territorial authorities have functions in relation to some of the notice conditions.

## 5.1 GENERAL ADMINISTRATION

The NES-PF includes requirements for foresters to submit written notice of certain *plantation forestry activities* to regional councils and territorial authorities and provide management plans to the relevant regional council on request. Councils may already receive documents such as harvest plans so may have established systems in place to receive this documentation. However, the NES-PF procedural requirements to submit written notice and review management plans when requested will be new for most councils. There is likely to be some benefit in developing systems and processes to administer the new requirements in the NES-PF efficiently and effectively.

This section provides some general guidance on techniques and processes that councils may adopt to administer the NES-PF. The most appropriate systems and processes will depend on the nature of the existing systems, the scale and nature of *plantation forestry* in the region/district, and the type of council. Specific NES-PF systems and processes are likely to be more beneficial for regional councils as most of the regulations in the NES-PF are regional council functions.

### 5.1.1 Single point of contact

It will generally be beneficial to have a single point of contact (a person or dedicated email address/phone number) within council to deal with all NES-PF related queries and receive relevant documentation required under the NES-PF. This will help to ensure *plantation forestry activities* are managed consistently under the NES-PF. It will also ensure that foresters know the right person or position at council to contact in relation to NES-PF queries (e.g. where to send written notice of a *plantation forestry activity*, who to ask for clarification where local rules still apply).

It may be beneficial to set up a dedicated email address that foresters can use to submit all NES-PF documents, and to clarify NES-PF related queries. This will also enable council staff to track and record NES-PF documentation in a consistent and accurate manner and help avoid issues associated with changes in staff/absences etc.

### 5.1.2 Acknowledging receipt of queries/documents

It is good practice to acknowledge receipt of information that relates to a permitted activity condition or resource consents. This practice should extend to all information submitted by foresters under the NES-PF, to give foresters certainty that their information has been received.

Foresters may request written acknowledgement that the information they provide has been received and/or confirmation that the information provided complies with the NES-PF permitted activity conditions before they undertake their *plantation forestry activity*. It is good practice for councils to provide this acknowledgement and confirmation as soon as practicable.

It may be beneficial to set up systems to efficiently respond to all information and communication received by foresters; for example, an automatic email response acknowledging receipt of documents. This automatic response could advise that a formal response will be provided [within 2-3 working days] confirming whether the information provided complies with the relevant condition (e.g. the written notice includes all the information required).

### 5.1.3 Templates and checklists

Councils may benefit from the preparation of NES-PF specific templates and checklists to help administer the NES-PF efficiently and effectively. Potential templates that may help councils administer the NES-PF include:

- Templates for foresters to submit written notice of *plantation forestry activities*.
- Email or letter templates that confirm that written notice of *plantation forestry activities* provided by foresters has been received and that it complies with the relevant regulation in the NES-PF.
- Email or letter template to acknowledge receipt of a management plan (when requested by the relevant regional council).
- Management plan checklists to assess management plans against the information requirements in Schedules 3 and 4 of the NES-PF.
- Consent application templates for certain *plantation forestry activities* that are likely to be applied for on a regular basis.
- Consent decision report templates for certain *plantation forestry activities*.
- Checklist to assess whether there are local plan rules that apply to *the plantation forestry activity* under Regulation 6 of the NES-PF (where plan rules may be more stringent).

## 5.2 NOTICE OF PLANTATION FORESTRY ACTIVITIES

The NES-PF permitted activity conditions require foresters to give councils notice of *afforestation, earthworks, river crossings, forestry quarrying and harvesting* prior to the activity commencing. Notice of these activities must be provided in writing to the relevant regional council (*earthworks, river crossings*) or the regional council and territorial authority (*afforestation, forestry quarrying, harvesting*) in accordance with the timeframes specified in the NES-PF. Table 1 outlines the permitted activity requirements for providing written notice of *plantation forestry activities*.

Table 1: Overview of requirements for written notice in the NES-PF.

Activity	Regulation	Consent authority	When required	Written notice of:	Timeframes
<i>Afforestation</i>	10	Regional council and territorial authority	All <i>afforestation</i> activities.	<ul style="list-style-type: none"> <li>• The location where the <i>afforestation</i> will occur and the proposed <i>setbacks</i> (including a description of how these were calculated)</li> <li>• The dates on which the <i>afforestation</i> is planned to begin and end.</li> </ul>	At least 20 and no more than 60 working days before the date on which the <i>afforestation</i> is planned to begin.
<i>Earthworks</i>	25	Regional council	If <i>earthworks</i> involve more than 500m <sup>2</sup> of soil disturbance	<ul style="list-style-type: none"> <li>• The place where <i>earthworks</i> are to be carried out</li> <li>• The dates on which the <i>earthworks</i> or road widening</li> </ul>	<ul style="list-style-type: none"> <li>• At least 20 and no more than 60 working days before the date on which the <i>earthworks</i> or road widening and</li> </ul>



Activity	Regulation	Consent authority	When required	Written notice of:	Timeframes
			in any 3-month period.	<p>and realignment are planned to begin and end</p> <ul style="list-style-type: none"> <li>• If a forestry earthworks management plan is required (if applicable)</li> </ul>	<p>realignment are planned to begin; or</p> <ul style="list-style-type: none"> <li>• A minimum of 2 days before the date on which any <i>earthworks</i> that are required for <i>salvage operations</i> are planned to begin; or</li> <li>• Annually, in the case of ongoing earthworks.</li> </ul>
<i>River crossings</i>	38	Regional council	The construction or removal of all <i>river crossings</i> .	<ul style="list-style-type: none"> <li>• The date on which the construction or removal of a <i>river crossing</i>, other than a <i>temporary river crossing</i>, is planned to begin</li> <li>• The location of the river crossing.</li> </ul>	At least 20 and no more than 60 working days before the date on which the <i>river crossing</i> activity is planned to begin.
<i>Forestry quarrying</i>	52	Regional council and territorial authority	If the volume extracted from a forest quarry exceeds 200 m <sup>3</sup> in any calendar year.	<ul style="list-style-type: none"> <li>• The place where the <i>forestry quarrying</i> is to be carried out and the proposed <i>setbacks</i> (including a description of how they were calculated)</li> <li>• The dates on which the <i>forestry quarrying</i> is planned to begin and end</li> <li>• If a quarry erosion and sediment management plan is required (if applicable).</li> </ul>	<ul style="list-style-type: none"> <li>• At least 20 and no more than 60 working days before the date on which the <i>forestry quarrying</i> is planned to begin; or</li> <li>• Annually, in the case of ongoing <i>forestry quarrying</i>.</li> </ul>
<i>Harvesting</i>	64	Regional council and territorial authority	All <i>harvesting</i> activities.	<ul style="list-style-type: none"> <li>• The place where <i>harvesting</i> will be carried out</li> <li>• The dates on which the</li> </ul>	• At least 20 and no more than 60 working days before the date on which the

Activity	Regulation	Consent authority	When required	Written notice of:	Timeframes
				<i>harvesting</i> is planned to begin and end.	<i>harvesting</i> is planned to begin; or <ul style="list-style-type: none"> <li>• A minimum of 2 days before the date on which <i>harvesting</i> required for <i>salvage operations</i> is planned to begin; or</li> <li>• Annually, in the case of ongoing <i>harvesting</i> operations.</li> </ul>

The notice regulations in the NES-PF are part of the permitted conditions for that activity. If a forester does not provide the written notice within the specified timeframe, or undertakes the activity without providing the notice, the notice regulations are not complied with and resource consent is required as a controlled activity (regulations 15(1), 34(1), 47(3), 60(1), and 70(1)). Control is reserved over the information on the activity required to be given in the notice.

In most cases, this will be a minor non-compliance and councils can consider whether a resource consent process is necessary. Section 37(1)(a) of the RMA enables councils to extend the deadline for providing written notice. This may be appropriate when councils receive the notice after the required deadline, or where specific information is missing from the original notice and the forester has committed to providing the required information within a timeframe agreed with council.

When extending a timeframe under section 37 of the RMA, councils are required to consider the interests of any directly affected person and the interests of the community in achieving an adequate assessment of effects, and its duty to avoid unreasonable delay (section 37A).

Alternatively, if the council considers that the non-compliance with the notice permitted activity condition is “marginal or temporary”, the council may be able to exercise its discretion to treat the activity as a permitted activity under section 87BB of the RMA. The Ministry for the Environment has developed guidance on deemed permitted activities which provides more detailed guidance on marginal and temporary rule breaches<sup>15</sup>.

### 5.3 MANAGEMENT PLANS – REQUEST AND REVIEW

*NB: the information in this section applies to regional councils as territorial authorities have no functions in relation to NES-PF management plans.*

The NES-PF requires management plans to be prepared as a permitted activity condition for:

- *Earthworks* that involve more than 500m<sup>2</sup> of soil disturbance in any 3-month period.
- *Forestry quarrying* where the volume of material extracted exceeds 200m<sup>3</sup> in a calendar year.
- *Harvesting*.

<sup>15</sup> Refer: <http://www.mfe.govt.nz/publications/rma/technical-guide-deemed-permitted-activities>

### 5.3.1 Requesting a management plan

The NES-PF states that the relevant regional council may request a copy of the management plan. There is no requirement for regional councils to request management plans and each council will need to decide on a case by case basis when to request management plans. Relevant factors to consider include whether:

- The activity is proposed on a 'high risk' site, such as *earthworks* in a *red zone* or a site that has particularly sensitive features/receiving environments.
- The *plantation forestry activity* covers a particularly large or complex land area.
- The forester has had a history or compliance issues or environmental incidents.
- The forester is new to the industry and/or region.

The role of foresters and regional councils in developing, providing, receiving and reviewing NES-PF management plans is summarised in Table 2.

Table 2: NES-PF management plans – roles and responsibilities.

Type of management plan	Relevant regulation(s)	Foresters role	Regional council role
<b>Forestry Earthworks Management Plan</b>	25(3), and 27 and Schedule 3	<p>If the NES-PF requires a management plan:</p> <ul style="list-style-type: none"> <li>• Foresters <u>must</u> complete a management plan before the activity is undertaken (timeframe varies for each activity) which contains the relevant details required by the NES-PF</li> <li>• A management plan <u>must</u> be provided if council requests it in writing</li> </ul>	<p>Once council receives notice from a forester that a management plan is required:</p> <p>Council <u>may</u> request a copy of the management plan in writing. Alternatively, council <u>may</u> decide not to request a copy of the management plan:</p> <ul style="list-style-type: none"> <li>• Council <u>may</u> require that the management plan is provided annually</li> <li>• If a forester informs council that they have made material amendments to their management plan, council <u>may</u> request a copy of the amended management plan</li> <li>• Where the council requests a management plan, council <u>may</u> assess it to determine whether the information requirements in the relevant schedule have been met.</li> </ul>
<b>Quarry Erosion and Sediment Management Plan</b>	52(3), and 59 and Schedule 4	<ul style="list-style-type: none"> <li>• If requested, a management plan <u>must</u> be provided to council within five working days of the date by which the management plan must be in place (timeframe varies for each activity)</li> <li>• <i>Material amendments</i> to the management plan <u>must</u> be documented and dated, the council <u>must</u> be advised that <i>material amendments</i> have been made to the management plan, and a copy of the amended management plan <u>must</u> be provided to council on request</li> <li>• The activity <u>must</u> be carried out in accordance with the management plan.</li> </ul>	
<b>Harvest Plan</b>	64(3), and 66 and Schedule 3		

### 5.3.2 Reviewing a management plan – completeness and quality

The NES-PF sets out specific information requirements for management plans in Schedules 3 and 4. If a management plan has been requested and received, councils can use these schedules as checklists to review the management plan and to confirm that it includes all the information required. When requesting and reviewing NES-PF management plans, it is good practice for councils to consider:

- How the plan will be assessed for completeness
- How to determine whether the plan includes 'sufficient detail' to enable a site audit to be carried out.

Councils have no role 'approving' the management plans – this would reserve discretion to councils which is not appropriate as a permitted activity condition.

#### Assessing management plans for completeness

Much of the information required in a management plan is standard factual information that will be straightforward for councils to review and confirm the plan meets the information requirements in Schedule 3 and 4 (e.g. property details, maps, locations of features etc). It may be beneficial to have checklists to audit management plan content against Schedules 3 and 4 will help councils confirm this information has been provided efficiently and consistently. The exact wording of the NES-PF schedules should be used in any checklists developed by council to ensure the NES-PF requirements are accurately conveyed (key definitions should also be noted).

Certain information requirements in Schedule 3 and 4 relating to management practices will require councils to use their judgement as to whether the information requirements have been met. For example, clause 4(d) of Schedule 3 and clause 4 of Schedule 4 require an assessment of whether management practices are **clearly described**, whether there is **sufficient information** on how and when management practices will be used, and whether there is **sufficient detail** to enable a site audit to be carried out (sufficient detail is discussed further below).

While councils can assess whether management practices in the plan are clearly described in sufficient detail, they have no power to assess the appropriateness or adequacy of the actual management practices described. Rather, the role of council as reviewer is simply to ensure that the information provided in the plan meets the requirements in the relevant schedule. For example, when assessing whether a forestry *earthworks* management plan has met the requirements of clause 4(d) of Schedule 3, a council should focus on whether:

- There is sufficient detail to enable a site audit of erosion and sediment control measures.
- The management practices have been clearly described, i.e. is it clear what management practices will be used, where they will be used, and under what circumstances.
- The information is sufficient to determine that the activity complies with other permitted activity conditions in the NES-PF. For example, the description of erosion and *sediment* control measures required by section 4(d) of Schedule 3 will help council determine whether Regulation 31(2) is complied with (i.e. what stormwater, runoff, and *sediment control measures* will be installed and maintained).

If the council determines that some of the information requirements have not been met, then the forester should be advised and given an opportunity to address or explain any identified gaps in the first instance so.

A situation may occur where a council has a genuine concern about the quality of a management plan, but the forester has technically met all the information requirements in Schedules 3 or 4. In this scenario, the forester has complied with the permitted activity conditions to prepare a completed management plan. However, council may advise the forester that they consider the management practices are not appropriate to manage the identified risks and suggest alternative practices. The forester may consider changing their management practices but are not obligated to.

Where a council has concerns about a management plan, this may also act as a trigger to undertake a site visit to assess compliance with the NES-PF. This will enable councils to determine whether the management practices described in the plan are adequate to comply with performance based permitted activity conditions (e.g. those conditions relating to stabilisation, ground disturbance and *sediment*).

Management plans are not required to follow a particular template, because much of the content of the NES-PF management plans is covered by existing harvest planning software and planning processes. Having two documents with overlapping requirements is likely to lead to confusion during forestry operations rather than a good outcome. However, it is good practice for foresters to clearly identify where in the management plan the NES-PF information requirements can be found (page number, section reference etc.). For example, foresters could provide their own cover sheet at the front of the management plan to clearly identify where in the plan the NES-PF information requirements can be found (page number, section reference etc.). This will assist with council reviews of management plans (and is a common approach used to demonstrate compliance).

### Sufficient detail

The key test for councils in assessing management plans is whether the plan includes **sufficient detail** on the proposed management practices **to enable a site audit of the management practices to be carried out**<sup>16</sup>. Council staff reviewing management plans should then ask themselves whether the plans provides sufficient detail on:

- The management practices that will be used to avoid, remedy and mitigate adverse effects of the activity on the environment and what environmental risks these management techniques respond to. All management practices should be clearly described in the plan. For some activities, a range of management practices will be used (e.g. for water control on *earthworks*), but there should be sufficient detail on each technique to be able to assess whether they will be planned, designed, constructed and maintained in accordance with acceptable practice.
- The locations and circumstances that the management practices will be used in. Compliance monitoring officers should have enough information to quickly find the location of the physical structures they need to check (e.g. silt fence or *slash* storage area). This does not mean that all locations always need to be accurately identified on a map. Foresters may need flexibility to decide final locations of management practices when on-site as the exact location may change for operational reasons. The management plan should also include sufficient detail on the circumstances when certain management practices will be used (e.g. silt fences will be used on low gradient sites and confined areas with small contributing catchments).

### 5.3.3 Material amendments to a management plan

Management plans are a tool to help foresters anticipate future environmental risks and then decide on a course of action to manage that risk. As management plans are prepared prior to the *plantation forestry activity* taking place, foresters may find that they need to deviate from the original management plan for operational reasons or in response to site-specific factors.

If a significant change to the methods used to manage environmental effects or location of *forestry infrastructure* from those stated in the management plan is proposed, then this is considered a *material amendment* under the NES-PF. All *material amendments* must be documented and dated. This is important as the permitted activity conditions state that the activity must be undertaken in accordance with the management plan.

Foresters are also required to advise the regional council that a *material amendment* to the management plan has been made and a copy of the amended management plan must be

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<sup>16</sup>Clause 4(d) of Schedule 3 and Clause 4 of Schedule 4.

provided to the regional council if requested. Table 3 outlines the NES-PF regulations that describe what a *material amendment* to a management plan is.

Table 3: Definitions of material amendment in the NES-PF.

Regulation	Type of management plan	Definition of <i>material amendment</i>
27(5)	Forestry earthworks management plan	<p><b><i>'material amendment means any significant change to the location of forestry roads, forestry tracks, or landings, or changes to the matters required by subclause (2)(a) that would significantly change the methods used to manage environmental effects.'</i></b></p> <p>Subclause (2)(a) matters are:</p> <ul style="list-style-type: none"> <li>The environmental risks associated with <i>earthwork</i> activities and measures to avoid, remedy, or mitigate the identified adverse effects.</li> </ul>
59(6)	Quarry erosion and sediment management plan	<p><b><i>'material amendment means any significant change, such as the relocation of quarry roads, or changes to the matters required by subclause (2) that would significantly change the methods used to manage environmental effects.'</i></b></p> <p>Subclause (2) matters are:</p> <ul style="list-style-type: none"> <li>The environmental risks associated with the <i>forestry quarrying</i> activities and measures to avoid, remedy, or mitigate the identified adverse effects.</li> </ul>
66(6)	Harvest plan	<p><b><i>'material amendment means any significant change in harvest regime, such as changing from ground-based to hauler, or changes to the matters required by subclause (2) that would change the methods used to manage environmental effects.'</i></b></p> <p>Relevant subclause (2) matters are:</p> <ul style="list-style-type: none"> <li>Environmental risks associated with <i>earthworks</i> and operational responses to those risks that avoid, remedy and mitigate the adverse effects of the activity on the environment.</li> <li>The information requirements of Schedule 3 (including clause 4 if the <i>harvesting</i> is undertaken without <i>earthworks</i>).</li> </ul>

Although the definitions of *material amendment* vary slightly for each regulation, the consistent test is that there must be a *'significant change ... that would change the methods used to manage environmental effects'*. A change needs to meet both parts of this test before it is considered a *material amendment* (i.e. the change needs to be significant and it needs to relate to methods used to manage environmental effects).

If councils encounter undocumented changes to management practices or the location of forestry infrastructure on site that they consider meet the definition of a *material amendment*, the situation should be discussed with the forester in the first instance. The forester should then be given an opportunity to amend the management plan (documenting and dating the change) and advise council of this change in order to comply with the relevant permitted activity condition.

### 5.3.4 Management plan site audit

The management plan enables the council to undertake a site audit of the management practices being used by providing a description of on-site risks and a list of management practices that will be used to manage those risks. This will enable council monitoring officers to focus their time during site visits to high risk areas and enable a more efficient site visit overall. This provides an incentive for foresters to prepare clear and easy to follow management plans as it will assist council monitoring officers with their site audits.

Councils may also benefit from the development of compliance monitoring templates to use when undertaking site visits of *plantation forestry activities*. These templates should be aligned with the NES-PF requirements and conditions for each *plantation forestry activity* and allow for the management practices described in the management plan to be verified on site.

## 5.4 PERFORMANCE BASED CONDITIONS – ASSESSING COMPLIANCE

The NES-PF contains a wide variety of performance based (i.e. outcome focused) conditions – ranging from quantitative standards that are generally relatively easy to assess for compliance through to qualitative conditions that are more subjective. Examples of NES-PF performance-based conditions are provided in Table 4.

Table 4: Examples of performance-based conditions in the NES-PF.

Regulation	Content	Comment
14(3)(a)	<i>Afforestation must not occur -</i>  <i>(a) within 5 m of -</i>  <i>(i) a perennial river with a bankfull channel width less than 3 m; or</i>  <i>(ii) a wetland larger than 0.25 ha</i>	Condition is relatively easy to interpret and assess for compliance as it contains quantitative information i.e. setbacks are expressed as a measurable distance.
26	<i>Sediment originating from earthworks must be managed to ensure that after reasonable mixing it does not give rise to any of the following effects on receiving waters:</i>  <i>(a) any conspicuous change in colour or visual clarity</i>  <i>(b) the rendering of fresh water unsuitable for consumption by farm animals</i>  <i>(c) any significant adverse effect on aquatic life.</i>	Condition is qualitative and involves some elements that must be assessed on a case-by-case basis.  This permitted activity condition is based on section 107 of the RMA. No direction is provided in the NES-PF on how to assess what constitutes 'conspicuous change' or at what point an adverse effect on aquatic life is 'significant'. Councils must rely on their own existing procedures for assessing discharges and water quality to determine compliance with this regulation.
68(6)	<i>When harvesting occurs within or across a riparian zone, all disturbed vegetation, soil, or debris must be deposited to avoid it entering into water, and to avoid -</i>  <i>(a) diversion or damming of any water body or coastal water</i>  <i>(b) degradation of any aquatic habitat or riparian zone</i>  <i>(c) damage to downstream infrastructure or property.</i>	There are qualitative aspects to this condition – if <i>harvesting</i> results in vegetation, soil or debris entering water, councils will need to determine whether it is resulting in the effects referred to in (a)-(c). Often it will be straightforward to determine whether diversion of a water body is occurring or a property is being damaged, but councils will need to use their own judgement and expertise to assess whether there has been any degradation of a habitat or <i>riparian zone</i> .

Assessing compliance with permitted activity conditions that have some qualitative aspects requires a judgement to be made based on site-specific factors. It is expected that councils will use their own procedures and practices to assess compliance under the NES-PF, as they would for any other rule in their plan. Reference should also be made to sections 4-7 of the [NES-PF User Guide](#) which provide more detailed guidance on the interpretation of the permitted activity conditions and requirements in the NES-PF.



## 6 Processing resource consents under the NES-PF

The NES-PF enables *plantation forestry activities* to be undertaken as permitted activities when the risks are lower and where the relevant permitted activity conditions are met. In other situations, foresters will need to obtain a resource consent, which may be for one or more of the following reasons:

- **Inherent site risk and/or exceeding a threshold** – the NES-PF introduces a resource consent requirement for certain *plantation forestry activities* located in the orange or *red zone* because of the inherent erosion risk on this land. In most cases, the NES-PF also includes an area or volume threshold for these activities before resource consent is required. For example, *afforestation* proposed in any *red zone* requires resource consent when the area to be planted is more than 2ha in any calendar year.
- **Non-compliance with a NES-PF permitted activity condition** – to be permitted, all *plantation forestry activities* must comply with the relevant permitted activity conditions for that activity and any general provisions applicable to that activity.
- **Non-compliance with district or regional plan rules that apply to the activity** – this will be when either:
  1. There is a more stringent plan rule that applies to the activity and prevails over the NES-PF under Regulation 6; or
  2. The *plantation forestry activity* involves activities or will result in effects that are not addressed in the NES-PF (e.g. effects on cultural sites) and are dealt with by the plan.

This section focuses on the processing of resource consent applications required due to non-compliance with the NES-PF.

### 6.1 PROCESSING RESOURCE CONSENTS FOR CONTROLLED AND RESTRICTED DISCRETIONARY ACTIVITIES

When resource consent is required under the NES-PF, this will generally be for a controlled or restricted discretionary activity<sup>17</sup>. Councils are familiar with how to process applications for these classes of activity in accordance with section 87A and 104-104C of the RMA:

- (a) **A controlled activity** – where consent must be granted, and any consent conditions imposed are restricted to matters over which control is reserved; or
- (b) **A restricted discretionary activity** – where consent can be granted or declined and council's powers in considering the application and imposing any consent conditions are restricted to the matters over which discretion is restricted to.

#### 6.1.1 Matters of control and discretion

The NES-PF specifies the matters control is reserved over or discretion is restricted to, when resource consent is required. These matters of control and discretion ensure applicants and councils focus on the adverse environment effects likely to be generated by the activity due to non-compliance or site-specific risk factors. When councils process resource consent applications under the NES-PF, the assessment should focus on:

- **The matters of control or discretion that are relevant to the specific non-compliance** – the NES-PF provides a single list of matters of control and/or discretion for each activity when resource consent is required. Not all matters will be relevant to the reason consent is required. Councils should focus their assessment on those matters that

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<sup>17</sup> A discretionary activity consent is required under two scenarios under the NES-PF: 1) *river crossings* not within the classes listed in Regulation 49; or 2) when permitted activity conditions relating to the disturbance of bed of a lake or river, or disturbance of a *wetland* (related to fish spawning) are not complied with (regulations 97(8) and (9)).

specifically relate to the reason consent is required, whether that be the location of the activity, or non-compliance with a permitted activity condition.

- **The specific aspect of the *plantation forestry activity* that is non-compliant with the permitted activity conditions, or the reason that resource consent is required** – for example, if *earthworks* do not comply with the water body setbacks in Regulation 29 then the assessment should focus on the potential adverse environmental effects of that non-compliance, such as increased risk of sedimentation due to the proximity of the earthworks to the water body (consistent with the matters discretion has been restricted to by Regulation 35(3)). Similarly, if a *plantation forestry activity* required resource consent because it was located on *red zone* land and exceeded a particular threshold (e.g. 2ha) then the assessment should focus on the risk of erosion and sedimentation due to its location on very high-risk erosion prone land (consistent with the matters discretion has been restricted to).

Table 5 demonstrates the link between a restricted discretionary activity under Regulation 35(1), the matters discretion is restricted to under Regulation 35(3), and the potential resource consent conditions that could be suitable.

Table 5: Link between matters for discretion and appropriate consent conditions.

<b>Example activity</b>	The <i>fill</i> used as part of <i>earthworks</i> will have more than 5% vegetation or wood content <sup>18</sup> . <i>Fill</i> will not be used near a <i>riparian zone</i> or the coastal environment and no riparian vegetation will be impacted.
<b>Non-compliance</b>	Regulation 30(1), assuming that all other permitted activity conditions are complied with (including general provisions).
<b>Applicable matters for discretion</b>	<p>35(3) - <i>Discretion is restricted to</i> - [matters potentially relevant to the non-compliance are underlined]</p> <p><u>(a) the timing, location, and duration of the activity</u></p> <p><u>(b) the effects on ecosystems, fresh water, and the coastal environment</u></p> <p><u>(c) the effects on vegetation in the riparian zone</u></p> <p><u>(d) the method of stabilising soil disturbance</u></p> <p><u>(e) the method of sediment retention and run-off management</u></p> <p><u>(f) storm water control measures</u></p> <p><u>(g) the methods used to minimise erosion</u></p> <p><u>(h) the placement and management of cuts, fill, or spoil likely to cause slope instability</u></p> <p><u>(i) the preparation and content of the forestry earthworks management plan</u></p> <p><u>(j) the information and monitoring requirements.</u></p>
<b>Potentially suitable consent conditions</b>	<p>Conditions imposed on the resource consent should only relate to the matters that are underlined above. In this example, the potential adverse effects relating to the non-compliance are primarily slope instability and potential erosion due to the high wood content of the <i>fill</i>. Suitable consent conditions should therefore focus on:</p> <ul style="list-style-type: none"> <li>• Where this type of <i>fill</i> should be avoided and areas where it may be used appropriately (matters (a), (b), and (h))</li> <li>• The methods used to stabilise this <i>fill</i> and minimise erosion (matters (d), (g) and (h)).</li> </ul>

<sup>18</sup> It is expected that this condition will be generally be complied with as is fundamental to the ongoing stability of *earthworks*. If *earthworks* contain a significant quantity of organic material that will rot, it will create voids, settle unevenly and have areas that slough off, all of which affect the integrity of the road or *landing*.

	A condition may include a requirement for these methods to be included in the forestry earthworks management plan if not already included (matter (i)). It may also be appropriate to have a consent condition to monitor and report on the stability of the <i>fill</i> to ensure that the <i>fill</i> is performing appropriately (matter (j)).
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### 6.1.2 Assessing objectives and policies

NES are regulations which have the effect of a rule in a plan – they do not contain objectives or policies. The NES-PF provides a nationally consistent set of standards that apply to *plantation forestry activities* and includes matters over which control is reserved or discretion is restricted to when a resource consent is considered and decided. In most cases, guidance from objectives and policies in the relevant district or regional plans or national or regional policy statements<sup>19</sup> will not be needed when resource consent is required under the NES-PF. This is because the matters of control and discretion in the NES-PF are focused and relatively discrete, and council can only consider these matters when assessing the potential effects of the activity, determining the application, and imposing any consent conditions<sup>20</sup>.

For example, generic objectives and policies relating to the contribution of plantation forestry to economic and social well-being will not be relevant considerations as the matters of control and discretion in the NES-PF do not include these considerations.

However, councils will still need to consider if there are any relevant objectives and policies in their plan as part of their section 104(1)(b) assessment. Potentially relevant objectives and policies to consider in the assessment of resource consent applications required under the NES-PF include (by way of example):

- Objectives and policies that relate to a specific coastal receiving environment where the *plantation forestry activity* is located. This would be relevant to the matters of discretion in the NES-PF relating to the effects on the coastal environment.
- Objectives and policies that relate to the management of environmental effects of activities on specific waterbodies. This would be relevant to the matters of discretion in the NES-PF relating to the effects on fresh water.

## 6.2 PROCESSING RESOURCE CONSENTS FOR DISCRETIONARY ACTIVITIES<sup>21</sup>

There are two instances where resource consent will be required for a discretionary activity:

- Constructing, using, maintaining, or removing a *river crossing* where the *river crossing* is not within the *river crossing* classes listed in Regulation 46; and
- Disturbance of the bed, or vegetation in the bed, of a *perennial river* or lake or disturbance of a *wetland* associated with a *plantation forestry activity* that does not meet the applicable permitted activity conditions (Regulation 97(8)-(9)).

Both these regulations are regional council functions.

Councils are able to consider all relevant matters for discretionary activities when making their section 104 assessments and may decline or grant resource consent applications with or without conditions (section 87A(4) of the RMA). It will be up to the relevant regional council to decide whether any of the objectives or policies in the regional plan are relevant to the application (along with the provisions of the other planning documents under section 104(1)(b) of the RMA). For example, the regional plan may include objectives and policies

<sup>19</sup> Being any relevant provisions of the documents listed under section 104(1)(b) of the RMA, which also includes other regulations, and the New Zealand Coastal Policy Statement.

<sup>20</sup> Section 87A(2)(b) for controlled activities and section 87A(3)(a) for restricted discretionary activities.

<sup>21</sup> Note that the guidance in this section is only applicable to *plantation forestry activity* applications that only require consent under the NES-PF. If a *plantation forestry activity* requires consent under a regional or district plan, council should process that component of the application in the same way it does currently.

relating to structures in the beds of rivers or may contain specific *river crossing* objectives and policies that may be relevant considerations.

### 6.3 PRINCIPLES OF APPROPRIATE RESOURCE CONSENT CONDITIONS

When granting resource consents under the NES-PF, it is the responsibility of the consent authority to determine whether resource consent conditions are required and, if so, set appropriate conditions in accordance with section 108 of the RMA. Appropriate resource consent conditions are important to ensure actual or potential adverse environmental effects are appropriately avoided, remedied or mitigated.

The permitted activity conditions in the NES-PF were drawn from regional plans and commonly used resource consent conditions. Any consent conditions imposed on resource consents granted under the NES-PF should therefore be constructed with consideration of the site-specific risks of the activity, rather than being generic.

There is a large body of guidance and case law on resource consent conditions. This has established that good consent conditions must be<sup>22</sup>:

- Within a council's powers under the RMA.
- For a valid resource management purpose.
- Clear, certain and self-contained.
- Within the matters of control or discretion;
- Fair, reasonable and practical.
- Relevant to the subject matter of the consent.

Section 108(1) also requires that consent conditions are appropriate. The last bullet point is particularly relevant under the NES-PF as it is divided into activity specific sub-parts and each plantation forestry activity is treated separately. For example, councils should not use a resource consent for an activity such as *harvesting* as an opportunity to impose consent conditions relating to a different *plantation forestry activity* (i.e. *replanting*<sup>23</sup>).

The Courts have confirmed that a resource consent condition may be invalid if:

- It is unreasonable<sup>24</sup>.
- It involves a delegation of local authority duties.
- Is uncertain or unenforceable<sup>25</sup>.
- It frustrates the grant of consent.

When developing resource consent conditions, it is generally good practice to discuss these with the applicant prior to the decision being made. This will help ensure that the consent conditions are clear, achievable and relevant from the perspective of the consent holder. It will also reduce the likelihood of an appeal or objection to the consent conditions.

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<sup>22</sup> Refer to Quality Planning guidance on consent conditions: <http://www.qualityplanning.org.nz/index.php/consents/conditions>

<sup>23</sup> Refer to *Banks v Waikato Regional Council* PT Hamilton A031/95, 20 April 1995 which held that a condition about replanting in the Tararua forest would not fairly and reasonably relate to the subject matter of the application to harvest existing trees; there would be an ulterior object of controlling a possible future activity on the same land.

<sup>24</sup> For examples of unreasonable or inappropriate conditions, see *Reeves v Waitakere City Council* PT W068/95, 26 May 1995, *Fletcher Challenge Forests Ltd v Whakatane District Council* EnvC Auckland A093/99, 10 September 1999 or *Arrigato Investments Ltd v Rodney District Council* EnvC Auckland A145/02, 5 July 2002.

<sup>25</sup> *Palmerston North City Council v New Zealand Windfarms Ltd* [2015] NZEnvC 70, see also Salmon Environmental Law commentary – 'Conditions should be enforceable, require specificity and clarity and accuracy of expression leading to a measure of certainty. Any guidelines imposed should not contain an undue measure of discretion, and techniques used should produce results that provide a reasonable guide for enforcing the condition'. Also refer *Wood v Selwyn DC* C035/94 citing *Bitumix v Mt Wellington BC* [1979] 2 NZLR 57, and *Ferguson v Far North DC* [1999] NZRMA 238 and *Cookie Muncher Charitable Trust v Christchurch City Council* NZEnvC W090/08

## 6.4 WHEN RESOURCE CONSENT IS REQUIRED UNDER THE RELEVANT REGIONAL OR DISTRICT PLAN

A *plantation forestry activity* may comply with the permitted activity conditions in the NES-PF but there may be district or regional plan rules that apply to the activity. This will occur under two scenarios:

1. The relevant plan contains a more stringent rule that applies to the activity and this prevails over the NES-PF under Regulation 6; or
2. The *plantation forestry activity* involves activities or will result in effects that are not addressed in the NES-PF and are dealt with in the plan.

In these scenarios, the consent application should be processed in the same way as council currently processes resource consent applications under their plan. The resource consent decision and any conditions will be focused on those aspects of the activity that are not regulated under the NES-PF. For example, if *earthworks* are located within a *significant natural area* identified in the district plan where resource consent is required for any land disturbance activity, the resource consent decision and any conditions will be focused on effects on that *significant natural area*. The assessment should not extend to any other potential adverse effects of *earthworks* when the activity complies with the relevant permitted activity conditions for *earthworks* in the NES-PF (which deal with these other potential adverse effects).

## 6.5 BUNDLING OF APPLICATIONS

In some situations, foresters may apply for resource consents for a range of *plantation forestry activities* at the same time which may be a mixture of controlled, restricted discretionary and, less commonly, discretionary activities. This will generally occur when foresters are seeking to do multiple *plantation forestry activities* and it is most efficient and practical for foresters to apply for all the required consents at the same time. For example, a *harvesting* activity may require consent as a controlled activity but may also involve *earthworks* and the formation of a *river crossing* that both require resource consent as a restricted discretionary activity. In this scenario a forester is likely to seek resource consent for all three activities at the same time.

There is some discretion to 'bundle' activities in such circumstances and apply the most restrictive activity status. This is done when multiple elements of the same proposal require resource consent and, for processing and decision-making purposes, those consents are 'bundled' by the consent authority and are considered together. This would mean that the resource consent applications for *harvesting*, *earthworks* and a *river crossing* are 'bundled' together and processed as one application, applying the most restrictive activity status.

However, case law<sup>26</sup> has emphasised that the approach of 'bundling' applications with different activity statuses is not appropriate where:

- One of the consents sought is for a controlled activity or restricted discretionary activity and where the scope of the consent authority's discretion in respect of one or more of the consents is relatively restricted.
- The effects of exercising the two consents would not overlap or have consequential or flow-on effects on matters to be considered on the other application.

These situations could apply under the NES-PF as the matters of control and discretion in the NES-PF are relatively confined and specific, and the effects of some types of *plantation forestry activities* do not have much overlap. For example, the effects of exercising a

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<sup>26</sup>Refer [South Park Corporation Ltd v Auckland City Council](#) [2001] NZRMA 350, [Urban Auckland Society for the Protection of Auckland City and Waterfront Inc v Auckland Council](#) [2015] NZRMA 235, and [North Canterbury Gas Ltd v Waimakariri District Council](#) EnvC A217/02

resource consent for *harvesting* and the construction of a *river crossing* may have limited overlap.

In other situations, the reasons for consent may be more closely linked and ‘bundling’ the activity status may be more appropriate. For example, *earthworks* undertaken just prior to and during *harvesting* is linked to the *harvesting* activity and both activities can have similar effects relating to *sediment* discharge in receiving environments. Councils will need to consider whether it is appropriate to bundle applications on a case-by-case basis with reference to the tests above.

Section 4.1 of the [NES-PF User Guide](#) provides guidance on the ‘bundling’ of *plantation forestry activities* that require resource consents with different activity status due to the activities occurring across a mixture of ESC zones.

## 6.6 PERMITTED BASELINE

Permitted baseline is a concept provided for under section 104(2) of the RMA that allows a council to disregard adverse effects of an activity on the environment if a plan or a national environmental standard permits an activity with that effect.

Once the NES-PF comes into force, it may form part of any permitted baseline. A council might therefore exercise its discretion to apply the NES-PF when assessing the adverse environmental effects of a *plantation forestry activity*. This may be relevant to an assessment of the adverse effects of an activity for notification purposes (in terms of both public and limited notification) as well as when making the substantive decision on the resource consent application (sections 95D(b), 95E(2), and 104 of the RMA).

# Appendix A: List of Key Provisions from the Resource Management Act 1991

## **10 Certain existing uses in relation to land protected**

*(1) Land may be used in a manner that contravenes a rule in a district plan or proposed district plan if-*

*(a) either-*

*(i) the use was lawfully established before the rule became operative or the proposed plan was notified; and*

*(ii) the effects of the use are the same or similar in character, intensity, and scale to those which existed before the rule became operative or the proposed plan was notified:*

*(b) or-*

*(i) the use was lawfully established by way of a designation; and*

*(ii) the effects of the use are the same or similar in character, intensity, and scale to those which existed before the designation was removed.*

*(2) Subject to sections 357 to 358, this section does not apply when a use of land that contravenes a rule in a district plan or a proposed district plan has been discontinued for a continuous period of more than 12 months after the rule in the plan became operative or the proposed plan was notified unless—*

*(a) an application has been made to the territorial authority within 2 years of the activity first being discontinued; and*

*(b) the territorial authority has granted an extension upon being satisfied that—*

*(i) the effect of the extension will not be contrary to the objectives and policies of the district plan; and*

*(ii) the applicant has obtained approval from every person who may be adversely affected by the granting of the extension, unless in the authority's opinion it is unreasonable in all the circumstances to require the obtaining of every such approval.*

*(3) This section does not apply if reconstruction or alteration of, or extension to, any building to which this section applies increases the degree to which the building fails to comply with any rule in a district plan or proposed district plan.*

*(4) For the avoidance of doubt, this section does not apply to any use of land that is—*

*(a) controlled under section 30(1)(c) (regional control of certain land uses); or*

*(b) restricted under section 12 (coastal marine area); or*

*(c) restricted under section 13 (certain river and lake bed controls).*

*(5) Nothing in this section limits section 20A (certain existing lawful activities allowed).*

## **20A Certain existing lawful activities allowed**

*(1) If, as a result of a rule in a proposed regional plan taking legal effect in accordance with section 86B or 149N(8), an activity requires a resource consent, the activity may continue until the rule becomes operative if,-*

*(a) before the rule took legal effect in accordance with section 86B or 149N(8), the activity-*

- (i) was a permitted activity or otherwise could have been lawfully carried on without a resource consent; and
    - (ii) was lawfully established; and
  - (b) the effects of the activity are the same or similar in character, intensity, and scale to the effects that existed before the rule took legal effect in accordance with section 86B or 149N(8); and
  - (c) the activity has not been discontinued for a continuous period of more than 6 months (or a longer period fixed by a rule in the proposed regional plan in any particular case or class of case by the regional council that is responsible for the proposed plan) since the rule took legal effect in accordance with section 86B or 149N(8).
- (2) If, as a result of a rule in a regional plan becoming operative, an activity requires a resource consent, the activity may continue after the rule becomes operative if,-
- (a) before the rule became operative, the activity -
    - (i) was a permitted activity or allowed to continue under subsection (1) or otherwise could have been lawfully carried on without a resource consent; and
    - (ii) was lawfully established; and
  - (b) the effects of the activity are the same or similar in character, intensity, and scale to the effects that existed before the rule became operative; and
  - (c) the person carrying on the activity has applied for a resource consent from the appropriate consent authority within 6 months after the date the rule became operative and the application has not been decided or any appeals have not been determined.

#### **Section 43A. Contents of national environmental standards**

- (1) National environmental standards may -
- (a) prohibit an activity:
  - (b) allow an activity:
  - (c) restrict the making of a rule or the granting of a resource consent to matters specified in a national environmental standard:
  - (d) require a person to obtain a certificate from a specified person stating that an activity complies with a term or condition imposed by a national environmental standard:
  - (e) specify, in relation to a rule made before the commencement of a national environmental standard,-
    - (i) the extent to which any matter to which the standard applies continues to have effect; or
    - (ii) the time period during which any matter to which the standard applies continues to have effect:
  - (f) require local authorities to review, under section 128(1), all or any of the permits to which paragraph (ba) of that subsection applies as soon as practicable or within the time specified in a national environmental standard.
- (2) A national environmental standard that prohibits an activity -
- (a) may do one or both of the following:
    - (i) state that a resource consent may be granted for the activity, but only on the terms or conditions specified in the standard; and



- (ii) *require compliance with the rules in a plan or proposed plan as a term or condition; or*
  - (b) *may state that the activity is a prohibited activity.*
- (3) *If an activity has significant adverse effects on the environment, a national environmental standard must not, under subsections (1)(b) and (4),-*
  - (a) *allow the activity, unless it states that a resource consent is required for the activity; or*
  - (b) *state that the activity is a permitted activity.*
- (4) *A national environmental standard that allows an activity -*
  - (a) *may state that a resource consent is not required for the activity; or*
  - (b) *may do one or both of the following:*
    - (i) *state that the activity is a permitted activity, but only on the terms or conditions specified in the standard; and*
    - (ii) *require compliance with the rules in a plan or proposed plan as a term or condition.*
- (5) *If a national environmental standard allows an activity and states that a resource consent is not required for the activity, or states that an activity is a permitted activity, the following provisions apply to plans and proposed plans:*
  - (a) *a plan or proposed plan may state that the activity is a permitted activity on the terms or conditions specified in the plan; and*
  - (b) *the terms or conditions specified in the plan may deal only with effects of the activity that are different from those dealt with in the terms or conditions specified in the standard; and*
  - (c) *if a plan's terms or conditions deal with effects of the activity that are the same as those dealt with in the terms or conditions specified in the standard, the terms or conditions in the standard prevail.*
- (6) *A national environmental standard that allows a resource consent to be granted for an activity -*
  - (a) *may state that the activity is -*
    - (i) *a controlled activity; or*
    - (ii) *a restricted discretionary activity; or*
    - (iii) *a discretionary activity; or*
    - (iv) *a non-complying activity; and*
  - (b) *may state the matters over which -*
    - (i) *control is reserved; or*
    - (ii) *discretion is restricted.*
- (7) *A national environmental standard may specify the activities for which the consent authority -*
  - (a) *must give public notification of an application for a resource consent:*
  - (b) *is precluded from giving public notification of an application for a resource consent:*
  - (c) *is precluded from giving limited notification of an application for a resource consent.*

#### **43B Relationship between national environmental standards and rules or consents**

- (1) *A rule or resource consent that is more stringent than a national environmental standard prevails over the standard, if the standard expressly says that a rule or consent may be more stringent than it.*
- (2) *For the purposes of subsection (1),-*
  - (a) *a rule is more stringent than a standard if it prohibits or restricts an activity that the standard permits or authorises;*
  - (b) *a resource consent is more stringent than a standard if it imposes conditions on an activity that the standard does not impose or authorise.*
- (3) *A rule or resource consent that is more lenient than a national environmental standard prevails over the standard if the standard expressly says that a rule or consent may be more lenient than it.*
- (4) *For the purposes of subsection (3), a rule or resource consent is more lenient than a standard if it permits or authorises an activity that the standard prohibits or restricts.*
- (5) *A land use consent or a subdivision consent granted under the district rules before the date on which a national environmental standard is notified in the Gazette prevails over the standard.*
- (6) *The following permits and consents prevail over a national environmental standard:*
  - (a) *a coastal, water, or discharge permit;*
  - (b) *a land use consent granted in relation to a regional rule.*
- (6A) *Subsection (6) applies -*
  - (a) *if those permits or consents are granted before the date on which a relevant national environmental standard is notified in the Gazette;*
  - (b) *until a review of the conditions of the permit or consent under section 128(1)(ba) results in some or all of the standard prevailing over the permit or consent.*
- (7) *This subsection applies to a resource consent not covered by subsection (5) or (6). The consent prevails over a national environmental standard if the application giving rise to the consent was the subject of a decision on whether to notify it before the date on which the standard is notified in the Gazette. However, the consent does not prevail if the standard expressly provides otherwise.*
- (8) *[Repealed]*
- (9) *If a national environmental standard requires a resource consent to be obtained for an activity, sections 10, 10A, 10B, and 20A(2) apply to the activity as if the standard were a rule in a plan that had become operative.*

#### **44A Local authority recognition of national environmental standards**

- (1) *Subsections (3) to (5) apply if a local authority's plan or proposed plan contains a rule that duplicates a provision in a national environmental standard.*
- (2) *Subsections (3) to (5) apply if a local authority's plan or proposed plan contains a rule that conflicts with a provision in a national environmental standard. A rule conflicts with a provision if -*
  - (a) *both of the following apply:*
    - (i) *the rule is more stringent than the provision in that it prohibits or restricts an activity that the provision permits or authorises; and*
    - (ii) *the standard does not expressly say that a rule may be more stringent than it; or*

- (b) *the rule in the plan is more lenient than a provision in the standard and the standard does not expressly specify that a rule may be more lenient than the provision in the standard.*
- (3) *If the duplication or conflict is dealt with in the national environmental standard in one of the ways described in section 43A(1)(e), the local authority must amend the plan or proposed plan to remove the duplication or conflict -*
  - (a) *without using the process in Schedule 1; and*
  - (b) *in accordance with the specification in the national environmental standard.*
- (4) *If the duplication or conflict arises as described in section 43A(5)(c), the local authority must amend the plan or proposed plan to remove the duplication or conflict—*
  - (a) *without using the process in Schedule 1; and*
  - (b) *as soon as practicable after the date on which the standard comes into force.*
- (5) *In every other case of duplication or conflict, the local authority must amend the plan or proposed plan to remove the duplication or conflict -*
  - (a) *without using the process in Schedule 1; and*
  - (b) *as soon as practicable after the date on which the standard comes into force.*
- (6) *A local authority may amend a plan or proposed plan to include a reference to a national environmental standard -*
  - (a) *without using the process in Schedule 1; and*
  - (b) *after the date on which the standard comes into force.*
- (7) *Every local authority and consent authority must observe national environmental standards.*
- (8) *Every local authority and consent authority must enforce the observance of national environmental standards to the extent to which their powers enable them to do so.*

### **139 Consent authorities and Environmental Protection Authority to issue certificates of compliance**

- (1) *This section applies if an activity could be done lawfully in a particular location without a resource consent.*
- (2) *A person may request the consent authority to issue a certificate of compliance.*
- (3) *A certificate states that the activity can be done lawfully in a particular location without a resource consent.*
- (4) *The authority may require the person to provide further information if the authority considers that the information is necessary for the purpose of applying subsection (5).*
- (5) *The authority must issue the certificate if -*
  - (a) *the activity can be done lawfully in the particular location without a resource consent; and*
  - (b) *the person pays the appropriate administrative charge.*
- (6) *The authority must issue the certificate within 20 working days of the later of the following:*
  - (a) *the date on which it received the request;*
  - (b) *the date on which it received the further information under subsection (4).*
- (7) *The certificate issued to the person must -*
  - (a) *describe the activity and the location; and*

*(b) state that the activity can be done lawfully in the particular location without a resource consent as at the date on which the authority received the request.*

*(8) The authority must not issue a certificate if -*

*(a) the request for a certificate is made after a proposed plan is notified; and*

*(b) the activity could not be done lawfully in the particular location without a resource consent under the proposed plan.*

*(8A) The authority must not issue a certificate if a notice for the activity is in force under section 87BA(1)(c) or 87BB(1)(d).*

*(9) Sections 357A, 357AB, and 357C to 358 apply to a request for a certificate.*

*(10) A certificate is treated as if it were an appropriate resource consent that -*

*(a) contains the conditions specified in an applicable national environmental standard; and*

*(b) contains the conditions specified in an applicable plan.*

*(11) A certificate treated as a resource consent is subject to sections 10, 10A, and 20A(2).*

*(12) A certificate treated as a resource consent is subject to this Act as if it were a resource consent, except that the only sections in this Part that apply to it are sections 120(1) or (2), 121, 122, 125, 134, 135, 136, and 137.*

*(13) If an activity relates to a matter that is or is part of a proposal of national significance for which a direction has been made under section 142(2) or 147(1)(a) or (b), a person may request a certificate from the Environmental Protection Authority and this section applies with the following modifications:*

*(a) a reference to a consent authority is to be treated as a reference to the EPA; and*

*(b) subsection (5)(b) does not apply; and*

*(c) the EPA may recover its actual and reasonable costs of dealing with the request from the person making the request; and*

*(d) if the EPA requires a person to pay costs recoverable under paragraph (c), the costs are a debt due to the Crown that is recoverable in any court of competent jurisdiction.*

*(14) In this section, **activity** includes a particular proposal.*