



Council charging to monitor permitted activities in the National Environmental Standard for Plantation Forestry

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1 Background

Between 17 June and 11 August 2015 the government released a discussion document¹ on a proposed National Environmental Standard for Plantation Forestry (NES-PF), which is a regulation made under the Resource Management Act 1991 (RMA). Since then, the government has made a number of policy adjustments in line with submissions, and Parliamentary Counsel is drafting the regulations.

Earlier this year an exposure draft of the regulations was released to a small group of councils, foresters and environmental NGOs to provide expert technical feedback on the workability of the regulations. That feedback will result in some changes to the regulations which are expected to be completed later this year.

The Resource Legislation Amendment Bill was introduced on 26 November 2015. It included an enabling provision for National Environmental Standards (NES) which would allow an NES to specify that councils could charge to monitor activities permitted in the NES (new section 43A(8) of the RMA).

On 18 April 2017, the Resource Legislation Amendment Act² received Royal Assent; the permitted activity monitoring provision may now be used in an NES.

The government proposes to include a clause in the NES-PF that would enable councils to charge for monitoring the permitted activities it contains. As all the other policy matters have previously been consulted on, we are now seeking specific views on the proposal to include this new clause.

2 How are permitted activities used in the proposed NES-PF?

Activities that are “permitted” under the RMA are those that people can carry out without seeking resource consent from a regional or district council. Council and NESs can specify any conditions required to control any potential effects of the activity.

One of the objectives of the NES-PF is to improve efficiency in the forestry sector. This is achieved by providing a single, consistent set of forestry management rules for the whole country, using a risk-based approach. Where activities are permitted, conditions have been developed to control potential adverse effects, such as erosion and sedimentation of waterways, by specifying what must be achieved. Where necessary, forestry operators would be required to provide the appropriate council with management plans specifying how they are to implement those conditions.

It is the government’s intention that the regulations set a standard for good practice in forestry; activities in the regulations are only permitted where foresters can comply with the range of conditions attached to the activity that control detrimental effects. Where they cannot comply with those conditions they must seek resource consent for the activity.

Councils have compliance and enforcement responsibility for RMA matters, including NESs. The RMA enables councils to recover costs for monitoring activities regulated by resource

¹ <http://www.mpi.govt.nz/news-and-resources/consultations/proposed-national-environmental-standard-for-plantation-forestry/>.

² <http://www.legislation.govt.nz/act/public/2017/0015/latest/DLM6669131.html>

consents, but not for monitoring permitted activities. The recent amendment can now enable councils to recover the costs of monitoring activities that are permitted by an NES. However, this must be explicitly provided for in each NES.

In the event that this enabling provision is included in the NES-PF regulations, and that councils fix charges for monitoring permitted activities, it will be up to councils to determine when monitoring is required. For example, monitoring may be appropriate:

- due to the nature of the activity and any potential associated risks;
- where an operator appears to have a poor understanding of permitted activity requirements, such as the quality of sediment and erosion management plans submitted to council; or
- where their compliance history gives cause for concern.

Where such monitoring is required, the government's position is that it is appropriate that the resource user (in this case the forester) pays the reasonable costs of that monitoring.

3 How would charges be set?

Section 36 (Administrative charges) of the RMA sets out the matters for which charges may be levied under the Act. Councils are specifically empowered to charge consent holders to monitor the consented activities by section 36(c) of the RMA:

'Charges payable by holders of resource consents, for the carrying out by the local authority of its functions in relation to the administration, monitoring, and supervision of resource consents....'

However, at the time the proposed NES-PF was originally consulted on, neither this section nor any other part of the RMA explicitly allowed councils to charge to monitor permitted activities. Amendments to section 36 through the Resource Legislation Amendment Act 2017 (RLAA) now enable councils to charge to monitor activities permitted by an NES:

'36(1) a local authority may from time to time, subject to subsection (2), fix charges of all or any of the following kinds:

(cc) charges payable by a person who carries out a permitted activity, for the monitoring of that activity, if the local authority is empowered to charge for the monitoring in accordance with section 43A(8):'

Section 36(2) specifies the process councils must use for making these charges. This includes use of the process set out in section 150 of the Local Government Act 2002 (LGA), which specifies a particular public consultation process. Once set, fees or charges are recorded in council Fees and Charges schedules, which are publicly available and updated annually. The RMA also specifies that the sole purpose of such charges is to "recover the reasonable costs incurred by the local authority in respect of the activity to which the charge relates"³. This means that councils need to justify the charges they set in their community.

Detailed advice on how councils go about setting charges for processing and monitoring consents, including consultation, is available on the Quality Planning website⁴. This is being

³ Section 36AAA(2) following Resource Legislation Amendment Act, transferred intact from section 36(4)(a).

⁴ <http://www.qualityplanning.org.nz/index.php/supporting-components/setting-charges#setting>

updated to reflect the recent changes to the RMA, but the principles contained in it apply to charging for monitoring permitted activities under an NES.

4 What sort of charges could councils set?

The new provision is an enabling power only, meaning its use is discretionary in any NES. If used, a council has the option to introduce a charge for monitoring, and has discretion over whether the charge applies in individual cases.

A desktop review of the 2016/17 Fees and Charges schedules of all councils showed that most specify a monitoring rate for resource consents, and some identify a monitoring rate that is not specifically linked to resource consents. It was not always possible to identify a specific rate in cases where monitoring was a component of a resource consent rate. Monitoring costs are described in a number of ways including:

- monitoring, compliance and enforcement fees;
- compliance monitoring officers; and
- staff time.

Some councils set a single inspection charge, some specify the number of hours this would cover but most set an hourly rate. The hourly rates range from \$85.00 to \$200.00, with the majority around \$150.00. Mileage rates apply in some cases, and a number of councils specify that actual and reasonable costs will also be recovered where these are generated over and above the hourly rate.

The new provision does not enable the government to suggest the type or size of monitoring charge. The process for establishing fees is well-established and subject to public consultation at a local level. Councils have established charging formulas which they will apply to this matter in line with local priorities.

5 What is monitoring?

The RMA does not define what monitoring means, but in relation to resource consents the Quality Planning website describes it as periodic 'checking in' on paper or through site visits to see whether conditions of a consent are being complied with⁵.

For permitted activities under the NES, monitoring could start any time after the activity has commenced. It could include, but not be limited to, paper-based assessments or site visits to cross-check whether a person was doing an activity in compliance with the conditions that apply to an activity, including those specified in management plans.

6 What activities could councils monitor?

There are a range of permitted activities in the NES-PF. We propose to enable charging for all permitted activities with substantive conditions that can be subject to monitoring. This includes the activities in the following table. Administrative conditions would be excluded.

⁵ ibid

Table 1: Permitted Activities for which Councils could fix charges for monitoring

General Description of activities the NES will apply to	General Focus for Permitted Activity Requirements
Main Forestry Activity	
<p>Afforestation Planting and growing new forestry on land not recently used for this purpose</p>	<p>Measures include those required:</p> <ul style="list-style-type: none"> • to control wilding conifers; • protection of significant natural areas and outstanding natural features and landscapes; and • setbacks.
<p>Pruning and thinning to waste Selective trimming or felling of trees with waste remaining on site</p>	<p>Measures relating to managing slash.</p>
<p>Earthworks Ground disturbance in the plantation forest to move or remove soil and rock for constructing forestry roads, tracks and landings, and upgrading and maintenance work.</p>	<p>Measures include those required:</p> <ul style="list-style-type: none"> • to manage and control discharges of sediment; • to manage how fill and spoil is deposited • to control erosion; • to manage run-off; and • to protect setbacks.
<p>River Crossings Structures in the plantation forest, and the approaches to them, that allow vehicles or machinery to cross water bodies.</p>	<p>Measures include those to manage:</p> <ul style="list-style-type: none"> • the design, placement and maintenance of river crossing structures; • contaminant discharges from the construction, maintenance or removal of river crossings; • the effects of structures on downstream users and for the passage of fish; and • erosion and sediment discharge during use.
<p>Forestry Quarrying Extraction, processing and stockpiling of material within a plantation forest that is required to form roads, tracks or landings within forests.</p>	<p>Measures include those to:</p> <ul style="list-style-type: none"> • manage visual effects; • protect setbacks; • manage fill or spoil; and • manage sediment discharges, stormwater and erosion.
<p>Harvesting Felling and extracting trees for sale or production and the processing or loading of logs for delivery to processing plants</p>	<p>Measures include those to:</p> <ul style="list-style-type: none"> • manage and control sediment; • plan for harvesting; • protect setbacks; • disturb the ground or margins of waterbodies and the coastal marine area; and • manage slash and debris.
<p>Mechanical land preparation Modifying land within a plantation forest to prepare for planting trees. This includes the use of machinery for removing roots, clearing slash, vegetation clearance between planting rotations, and mounding the soil into raised areas.</p>	<p>Measures include those to:</p> <ul style="list-style-type: none"> • specify methods that can be used; • manage and control sediment; and • protect setbacks.
<p>Replanting Planting and growing forestry after harvesting.</p>	<p>Measures include those to:</p> <ul style="list-style-type: none"> • protect setbacks; and • control wilding conifers.
General Matters	
<p>Slash traps Traps in water bodies preventing slash being mobilised by water e.g. during rain events.</p>	<p>Measures include those:</p> <ul style="list-style-type: none"> • for the design, placement and maintenance of slash traps; • to manage effects on downstream users and for the passage of fish; • to manage contaminant discharges from the construction, maintenance or removal of slash traps; and • to manage sediment discharges.
<p>Vegetation clearance and disturbance including of indigenous vegetation during forestry activities</p>	<p>Measures include various conditions intended to limit vegetation clearance to incidental damage, clearance for maintenance purposes, and a size of land area as a threshold.</p>

Discharges, disturbance and diversion of water during forestry activities	Measures to protect spawning fish, and the steps or threshold for discharges, disturbances and diversion occurring during the main forestry activities managed under the NES-PF.
Noise	Noise limits associated with plantation forestry activities managed under the NES-PF.
Dust	Preventing dust associated with plantation forestry activities being noxious, objectionable or offensive outside that forest.
Indigenous bird nesting	Measures requiring that procedures be in place to recognise, confirm and protect classes of threatened bird species when present.
Fuel storage and refuelling	Measures to prevent fuel used or stored for plantation forestry activities from entering waterbodies, or land where it can enter water.

Enabling councils to charge for monitoring of permitted activities will ensure that councils can cost recover for monitoring and enforcement as they would if the activity was regulated through a resource consent. Councils will retain full discretion about where, when and how often to carry out particular monitoring and enforcement activities.

We consider that enabling charging for monitoring of the activities in the table on the previous page will promote better environmental outcomes and ensure that councils can oversee good implementation of the proposed NES-PF as they do with existing RMA regulations.

There are two types of permitted activities in the draft NES-PF which have purely administrative conditions that we do not consider are appropriate for monitoring.

These are:

Activities with notification provisions: where foresters are only required to notify councils of a permitted activity they are about to undertake it is not appropriate for councils to monitor the notification. This does not preclude councils from monitoring the activity for which notification is given; and

Reporting on design and location of slash traps: where a report must be made to council there is no need to monitor this. The report arrives or it doesn't; where it doesn't the requirement is not met. This does not preclude councils from monitoring the operation of the slash traps.

7 What would happen if we didn't apply this provision?

If councils cannot choose to cost recover for monitoring and enforcement, limited budgets or competing needs for funding may mean that the permitted activities with substantive conditions are not subject to adequate monitoring and enforcement.

The permitted activity conditions have been carefully developed to avoid significant adverse effects from the particular activities. This means that if the activities are not carried out in compliance with the applicable conditions, there is a risk of negative environmental effects, and the person should be carrying the activity out with a resource consent. Therefore, it is of high importance that councils are adequately resourced through cost-recovery to carry out monitoring and enforcement activities in relation to the permitted activities.