

Chair
Cabinet Economic Growth and Infrastructure Committee

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

Proposal

1. Cabinet agreed to the policies underpinning the National Environmental Standards for Plantation Forestry in June 2016 [EGI-16-MIN-0146 refers].
2. We now seek authority from Cabinet to submit the 'Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017' to the Executive Council, in conjunction with an additional policy decision.

Executive Summary

3. Plantation forestry is a nationally important industry for New Zealand that faces significant and increasing unwarranted variation in council plan provisions across the country under the Resource Management Act 1991 (RMA). Unwarranted variation can create inconsistent environmental outcomes and significant uncertainty, unnecessary costs, and complexity for forestry sector participants.
4. To address these issues we propose to introduce the National Environmental Standards for Plantation Forestry (NES-PF) to:
 - a) maintain or improve the environmental outcomes associated with plantation forestry activities nationally; and
 - b) increase efficiency and certainty in the management of plantation forestry activities.

5. The NES-PF proposal has been refined over several years to ensure the provisions are efficient, effective, and achieve the policy objectives. The NES-PF will:
 - a) provide nationally consistent rules for eight core forestry activities¹ to remove unwarranted variation in council planning rules;
 - b) permit these activities, with conditions to manage (avoid, remedy or mitigate) adverse effects on the environment;
 - c) require a resource consent where the environmental risk is higher and more regulatory oversight is appropriate, or where the permitted activity conditions cannot be complied with; and
 - d) allow councils to have more stringent rules than the NES-PF to give effect to other national direction, manage unique locally significant areas and sensitive receiving environments, and to protect sources of human drinking water.
6. To recommend the making of the NES-PF the Minister for the Environment must satisfy the requirements of sections 44(1) and 46A of the RMA. I consider that these requirements, which include adequate consultation, consideration of a Summary of Submissions and Recommendations report, consideration of the consistency of the NES-PF with the RMA, and having particular regard to a section 32 evaluation report, have been met. I therefore recommend to Cabinet that the NES-PF be made².
7. In June 2016 Cabinet agreed to the policies underpinning the NES-PF and authorised Ministers to make final policy changes [EGI-16-MIN-0146 refers]. Through developing the drafting, we have made a number of technical changes to the NES-PF to improve the clarity and workability of the regulations (see attached table).
8. A new provision in the RMA following the enactment of the Resource Management Legislation Amendment Act 2017 will enable councils to set charges for monitoring permitted activities in a national environmental standard. We propose to use this provision in the NES-PF and completed public consultation on this matter from May to June 2017.
9. We seek Cabinet's agreement to include the new provision in the NES-PF and apply it those permitted activities which present a higher risk of adverse effects from non-compliance with conditions. These are: harvesting, forest quarrying, earthworks, and river crossings. We also seek authority to submit the 'Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017' to the Executive Council.
10. If Cabinet agrees to the making of the NES-PF the regulations will come into effect on 1 May 2018. This will align with the release of other national direction, such as the NES for Aquaculture, and give sufficient time to develop and disseminate guidance material to support effective implementation.

1 These activities are: afforestation, mechanical land preparation, earthworks, forest quarrying, river crossings, pruning and thinning to waste, harvesting, and replanting.

2 The Minister for the Environment has taken this decision alongside the Associate Minister for Primary Industries.

Background

11. Plantation forestry delivers significant economic and social benefits to New Zealand, contributing \$5.1 billion in export revenue in the year to June 2016 and employing over 26,000 people. Forestry also provides important environmental benefits such as improving water quality, controlling erosion, sequestering carbon, and other ecosystem services.
12. As with most land uses, plantation forestry activities can have adverse environmental effects if not managed appropriately. Adverse effects may occur at certain stages of the forestry life cycle, e.g. following harvest or during earthworks when soil is exposed. Under the RMA councils manage these adverse effects through local plans (district or regional), taking into account local environmental conditions and community priorities (such as cultural values). Therefore, a level of variation is anticipated and desirable.
13. However, independent analysis³, and a subsequent commissioned report⁴, has identified significant variation in council plan rules for the plantation forestry industry, and that this variation is increasing. In addition, the level of variation could not be justified by local geophysical characteristics. Such variation is unwarranted, i.e. the variation between plans does not provide any discernible environmental, economic, social or cultural benefit, and imposes a cost.
14. Unwarranted variation can create inconsistent environmental outcomes as the same activity is managed differently across districts and regions that may have similar environmental conditions. This can create operational and investment uncertainty, as well as unnecessary costs and complexity, for forestry sector participants. Variation is a particular issue for foresters operating across multiple council boundaries who need to comply with more than one set of council rules. Research indicates that more than 300 forest owners (whose land accounts for more than 80 percent of the national plantation estate) have forests across more than two districts, and approximately 200 of these owners manage forests in two or more regions.

Consultation and engagement

15. In June 2016, we advised Cabinet that public consultation on the proposal for a NES-PF was completed in 2015, and outlined the key issues raised by submitters and changes made to the regulations to address these issues [Sub16-0039 refers].

³ Brown and Pemberton (2010). *Review of 12 regional council and 4 unitary authority RMA plan provision relating to plantation forestry*; Brown and Pemberton (2010). *Review of 23 district council RMA plan provisions relating to plantation forestry*.

⁴ Brown and Company Planning Group (February 2016). *Review of regional plan provisions relating to forestry*.

16. In February 2017, an exposure draft of the NES-PF regulations was tested with a selected group of technical experts made up of regional councils and members of a Stakeholder Working Group, as well as two independent reviewers. Feedback on the exposure draft was constructive and largely positive. Following this process we made a number of technical changes to improve the clarity and workability of the regulations to ensure smooth implementation. These are set out within a list of technical changes made since Cabinet's policy decisions in the attached table.
17. The Resource Management Legislation Amendment Act was enacted in April 2017 with a new provision in the RMA (section 43A(8)) that will empower councils to charge for monitoring any specified permitted activities in a national environmental standard. We conducted additional public consultation from May to June this year on including this new provision in the NES-PF. Fifty-eight submissions were received with mixed support for this additional proposal. Further analysis is provided on this issue below and we seek Cabinet's decision on this matter.
18. Consultation on the development of the NES-PF has involved submissions from the public and iwi, and allowed sufficient time and opportunities for stakeholders to consider the proposal, as required by section 44(1) of the RMA.

Policies of the NES-PF

19. Cabinet approved the policies underpinning the NES-PF in June 2016 [EGI-16-MIN-0146]. The policy objectives of the NES-PF are to maintain or improve the environmental outcomes associated with managing plantation forestry activities nationally, and to increase efficiency and certainty in the management of plantation forestry activities under the RMA.
20. To address the problem of unwarranted variation, the NES-PF will provide a nationally consistent rule set for eight core plantation forestry activities: afforestation, mechanical land preparation, earthworks, forest quarrying, river crossings, pruning and thinning to waste, harvesting, and replanting. These activities are permitted⁵ with specified conditions to manage (avoid, remedy or mitigate) adverse environmental effects. Where the conditions cannot be met a resource consent is required.
21. Foresters will be required to take a proactive approach towards identifying risks and mitigations through the use of nationally consistent specifications for forest management plans for high-risk activities (earthworks, forest quarrying and harvesting)⁶. These plans describe how foresters will comply with the conditions of a permitted activity, including identifying risks and how they will avoid, remedy or mitigate the adverse environmental effects of those activities.

⁵ A permitted activity is one for which allowance is made in council plans but resource consent is not required. There will be some cases where an activity has conditions, which must be met in order for that activity to be permitted.

⁶ Specifically these are: the Forestry Earthworks Management Plan, the Quarry Erosion and Sediment Plan, and the Harvest Plan.

- 22.** The NES-PF requires foresters to use three environmental risk assessment tools to determine the level of risk that needs to be managed: the Erosion Susceptibility Classification (ESC)⁷, the Fish Spawning Indicator, and the Wilding Tree Risk Calculator. The level of risk determines the level of control over an activity, e.g. ESC Red Zone land has stricter requirements than ESC Green Zone land. These tools take into account local environmental variation and risk within a nationally consistent framework and will help achieve consistent and rigorous environmental outcomes.
- 23.** Where the risk assessment tools identify a high risk of adverse environmental effects that cannot be mitigated through good forest management practices, foresters will need to obtain a resource consent. This ensures resource consents are only required for activities with potentially significant adverse effects. The NES-PF is structured to ensure the level of council control over consents increases as the level of risk associated with an activity increases.
- 24.** Where a resource consent is required, the NES-PF also specifies the type of controls councils can impose on the consent, by providing for:
- a *controlled activity*, where the consent must be granted but councils can impose conditions;
 - a *restricted discretionary activity*, where the consent can be granted or declined but only on grounds specified in the NES-PF and conditions are also limited to specified matters; or
 - a *discretionary activity*, where the consent can be granted or declined based on an assessment of all matters relevant under the RMA.
- 25.** Councils will have the flexibility to have more stringent rules where necessary to manage unique local conditions and sensitive receiving environments outlined in sections 6(b) and 6(c) of the RMA⁸, and give effect to the objectives of National Policy Statement for Freshwater Management (NPS-FM) and specific policies in the New Zealand Coastal Policy Statement (NZCPS)⁹.
- 26.** The NES-PF does not regulate every aspect of forestry activities. Councils will continue to have full discretion to manage activities outside the scope of the NES-PF. For example, effects on historic heritage will continue to be managed by regional and district plan rules, which may require a resource consent or impose conditions. The Heritage New Zealand Pouhere Taonga Act 2014 will also apply alongside the NES-PF.

⁷ The ESC categorises erosion risk into 'zones', with ESC Green Zone presenting the lowest erosion risk and ESC Red Zone presenting the highest.

⁸ Section 6(b) refers to the protection of outstanding natural features and landscapes, and section 6(c) refers to the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

⁹ These policies are: indigenous biodiversity (11), preservation of natural character (13), natural features and landscapes (15), and sedimentation (22).

Changes to the NES-PF regulations since Cabinet's policy decisions

27. Cabinet authorised the Minister for the Environment and the Associate Minister for Primary Industries to approve the final details of planning and control terms and conditions, and any other changes required to give effect to the NES-PF policy decisions [EGI-16-MIN-0146 (14) refers]. A list of technical changes made since Cabinet's policy decisions is attached.

Evaluation of the NES-PF

28. An evaluation report, prepared in accordance with section 32 of the RMA, found that the policy objectives of the NES-PF are the most appropriate to achieve the purpose of the RMA by implementing industry good practice nationally to maintain or improve environmental outcomes. The NES-PF will also enable forestry sector participants to better provide for their economic and social wellbeing due to greater certainty and efficiency in the management of forestry activities.
29. The NES-PF provides an efficient approach by introducing a nationally consistent rule set. The NES-PF will have a positive benefit to cost ratio¹⁰ due to improved regulatory certainty and efficiency for councils and foresters, and significant savings from ongoing advocacy and plan development. The efficiency benefits are expected to increase over time as councils and foresters become more familiar with the regulations.
30. The NES-PF provides an effective approach as the provisions are targeted to the environmental effects and risks associated with forestry activities. The NES-PF will achieve consistent and more certain application of established good practice forestry management to maintain or improve environmental outcomes nationally. The report notes that there will be significant environmental benefits, but that these are difficult to quantify. Consistent permitted activity conditions and focussed consent requirements will provide greater certainty compared to the current RMA planning framework.

Managing significant adverse environmental effects

31. A NES cannot permit an activity if it has significant adverse effects on the environment. An Assessment of Environmental Effects¹¹, and a subsequent review following technical changes¹², concluded that the permitted activities, with associated conditions, in the NES-PF, would not result in any significant adverse effects on the environment.

10 NZIER and MWH Global (2016). *Plantation forestry economic analysis – revisions with new information on proposed National Environmental Standards*.

11 Boffa Miskell (June 2016). *NES for Plantation Forestry: Evaluation of effectiveness of NES on environmental outcomes*.

12 4Sight Consulting (May 2017). *Assessment of the implications of changes to the draft National Environmental Standard for Plantation Forestry*.

New policy decision

- 32.** Councils have a duty to observe, and enforce the observance of, a NES under sections 44A(7) and (8) of the RMA respectively. Councils undertake compliance monitoring and are already empowered under the RMA and the Local Government Act 2002 (LGA) to set fees and charges to recover the costs of issuing and monitoring resource consents. Where councils have the baseline resources available they may undertake monitoring of the permitted activities in their plans; however, we are aware that some councils do not proactively monitor permitted activities.
- 33.** A recent amendment to the RMA, following the enactment of the Resource Management Legislation Amendment Act 2017, now allows a NES to empower councils to charge for monitoring specified permitted activities (section 43A(8)).
- 34.** Activities are permitted in the NES-PF, with robust conditions applied to appropriately manage (avoid, remedy or mitigate) any environmental risks. This risk-based approach means that a resource consent is required if the forester cannot meet the permitted activity conditions, or the activity is high-risk.
- 35.** Councils are expected to monitor permitted and consented activities in the NES-PF to ensure they are being complied with. However, some permitted activities present a higher risk of adverse effects on the environment from non-compliance than others if conditions are not met. For example, the permitted activities that have conditions requiring management plans (harvesting, forest quarrying and earthworks) involve more land disturbance which could lead to larger scale, or longer term, erosion and sedimentation of waterways if the management plans are not complied with. It is therefore important that monitoring of these permitted activities is prioritised and appropriately resourced.
- 36.** We seek Cabinet's approval to include a new enabling power in the NES-PF for councils to charge for permitted activity monitoring. This power will be limited to those permitted activities that present a higher risk of adverse environmental effects from non-compliance, to ensure monitoring of these permitted activities is prioritised. Analysis has identified that the higher risk permitted activities are those that have conditions requiring management plans (harvesting, forest quarrying, and earthworks), and where there could be shorter term adverse environmental effects if permitted activity conditions are not met, specifically river crossings¹³.

¹³ Non-compliance with harvesting permitted activity conditions can present a risk of damage and sedimentation of receiving environments; non-compliance with forest quarrying and earthworks permitted activity conditions can present a risk of erosion and sedimentation of waterways; and non-compliance with river crossings permitted activity conditions can present a risk of sedimentation of waterways, and disruption of fish spawning habitat and fish passage.

- 37.** If councils do not have the ability to reasonably charge for monitoring of these permitted activities there is a risk that some councils will not have the resources needed to effectively monitor compliance with the NES-PF. This creates a number of issues, including:
- a high likelihood that compliance monitoring of NES-PF permitted activities would not be carried out consistently or to adequate levels across all regions;
 - in order to meet monitoring requirements, some councils may pass on the costs of monitoring compliance to ratepayers rather than the foresters that create the need for monitoring; and
 - without a consistent monitoring presence, some foresters may not comply with the permitted activity conditions, leading to potentially adverse environmental effects. Compliance failure is unable to be identified without monitoring of permitted activities.
- 38.** Some monitoring of the other permitted activities¹⁴ is still anticipated to reflect local priorities and encourage compliance, particularly where operators have demonstrated poor practice or non-compliance in the past. However, we do not consider that enabling councils to charge for the monitoring of these permitted activities is appropriate, as the risk and potential scale of effects from non-compliance is not as great.
- 39.** A review of the Assessment of Environmental Effects noted that the effectiveness of the NES-PF is dependent on all of the permitted activity conditions being complied with. The NES-PF framework for permitted and consented activities takes a risk-based approach. It is therefore important that all councils have the resources necessary to undergo monitoring of permitted activities in the NES-PF to minimise the risk of non-compliance.

Process for setting charges

- 40.** Section 36 of the RMA sets out a specific process that councils must follow to set fees and charges, including public consultation and providing evidence of the costs and benefits of their proposal. The process for setting charges for monitoring permitted activities is the same as that currently used by councils for setting all fees and charges, including for issuing and monitoring resource consents. Through this process foresters can formally engage with councils on any charges levied.
- 41.** Both the RMA and the LGA require councils to have regard to specific criteria when fixing monitoring charges. For example, the sole purpose of a charge is to recover the reasonable costs incurred by the local authority in respect of the activity to which the charge relates¹⁵.

¹⁴ Mechanical land preparation, afforestation, pruning and thinning to waste, and replanting.

¹⁵ Section 36AAA(2) of the Resource Management Act and section 150(4) of the Local Government Act.

42. The Ministry for the Environment is developing *Compliance, Monitoring and Enforcement Best Practice Guidelines* which is expected to be released in 2018. The guidelines will set out a risk-based approach to monitoring and it is expected that councils will target the permitted activities that present the highest risk of adverse environmental effects from non-compliance, or target operators who have demonstrated poor practice or non-compliance in the past. The guidelines will also include best practice for setting charges for permitted activity monitoring.

Consultation and feedback

43. We consulted on including the new provision in the NES-PF, applied to all permitted activities, from 19 May to 16 June this year, and received 58 submissions. Feedback on the use of the provision was mixed. Councils and environmental NGOs were supportive as the provision addresses a major concern over funding raised by councils during the 2015 consultation. Foresters opposed the provision on the basis of potential inequity with other sectors, uncertainty regarding costs, and perceived inadequacy of council monitoring plans.
44. Based on feedback we have changed the proposal to only include those permitted activities which present a higher risk of adverse environmental effects from non-compliance with conditions.
45. We recognise that the provision creates some sector inequity and foresters may be charged for permitted activity monitoring that other sectors are not, e.g. building river crossings¹⁶. However, Government is taking a number of actions that will impact other primary sectors in different ways over time, e.g. farmers will need to implement changes on-farm to comply with council rules set under the National Policy Statement for Freshwater Management to improve water quality.
46. Any charges set by councils need to be based on the actual costs of monitoring, which will naturally take into account local priorities and environmental conditions, e.g. operations in steeper areas are higher risk and may require more monitoring than those on flat land. This will introduce some variation in the activities councils set charges for and the level of charges set. Section 43A(8) of the RMA does not enable the government to recommend the level of charging and we consider some variation to be appropriate to implement the NES-PF effectively in all regions. However, there has been cross-council work in recent years to improve consistency in compliance management, and a common approach has been set out in the Regional Sector Strategic Compliance Framework 2016-2018¹⁷. In addition, the approach to setting charges will be consistent as all councils will need to undergo a specific public consultation process.

¹⁶ Building river crossings are permitted in some plans and at some size thresholds, and consented in others.

¹⁷ Developed by the Compliance and Enforcement Special Interest Group to provide a collective, consistent overarching framework for regional councils and unitary authorities.

47. Some foresters argued that councils can already set charges for permitted activity monitoring through general or targeted rates under the Local Government (Rating) Act 2002. However, the use of these powers in relation to activities in the NES-PF would not be appropriate as there is now a specific provision in the RMA for this purpose. It is important to ensure that any monitoring costs are incurred by those that benefit from the activity (and therefore create the need for monitoring). Setting a sector-specific rate for all foresters would mean good operators will subsidise the monitoring of poor operators which is counter to the risk-based approach.

Impacts of the provision

48. We expect councils to use the provision if it is available to them as the NES-PF is likely to result in increased permitted activity monitoring costs for councils that would otherwise need to be absorbed by baseline funding or increased rates. A cost-benefit analysis¹⁸ has estimated that permitted activity monitoring costs for councils will increase by approximately 15 percent, equating to \$48,000 per annum across all regional councils¹⁹, although it is expected these costs will reduce as councils and foresters become more familiar with the regulations.
49. The cost-benefit analysis estimated that foresters would have increased costs of approximately 15 percent (\$19,000 nationally in the first year for large foresters) from increased permitted activity reporting requirements and increased complexity of the conditions. The costs are expected to decrease over time with efficiency gains.
50. If the provision is included in the NES-PF some of the costs of monitoring permitted activities will be passed on to foresters. We do not expect the charges set for monitoring permitted activities in the NES-PF to greatly differ from those set for monitoring resource consents. As an indication, councils typically charge between \$85 and \$200 per hour for council officer time for consent compliance monitoring or compliance action.
51. If Cabinet agrees to include the provision in the NES-PF, MPI and MfE will monitor the types and levels of any charges councils set, and the way in which they are levied. This will be included in a report to Ministers on implementation of the NES-PF twelve months after the NES-PF comes into effect.

Timing and 28-day rule

52. No waiver of the 28-day rule is sought. The regulations will come into force on 1 May 2018 which will provide time for supporting material for the NES-PF to be developed and disseminated to councils and foresters.

18 NZIER and MWH Global (2016). *Plantation forestry economic analysis – revisions with new information on proposed National Environmental Standards*.

19 This is based on an estimated status quo cost of \$320,000 (\$20,000 x 16 councils) derived from interviews with councils: NZIER and MWH Global (2016).

Compliance

53. The 'Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017' complies with:
- a) the principles of the Treaty of Waitangi;
 - b) the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - c) the principles and guidelines set out in the Privacy Act 1993;
 - d) relevant international standards and obligations;
 - e) the *LAC Guidelines on the Process and Content of Legislation* (2014 edition).
54. Before recommending the making of the NES-PF to the Governor-General, the Minister for the Environment must satisfy the requirements of sections 44(1) and 46A of the RMA summarised below. I consider (alongside the Associate Minister for Primary Industries) that these requirements are met, including:
- i. **Adequate consultation process:** I am satisfied that the consultation process for the NES-PF provided adequate time and opportunity for submissions from the public and iwi authorities. The NES-PF involved three public consultations, a targeted consultation on an exposure draft of the regulations and ongoing stakeholder engagement throughout development;
 - ii. **Considering submissions:** a Summary of Submissions and Recommendations report has been prepared which summarises the feedback received from consultation on the NES-PF. I have considered changes proposed following consultation and will publicly notify this report when the NES-PF is gazetted;
 - iii. **Consistency with the RMA:** I am satisfied that the NES-PF is consistent with the purpose of the RMA. An evaluation report confirms that the NES-PF is consistent with the purpose of the RMA and will improve environmental outcomes and economic wellbeing; and
 - iv. **Section 32 evaluation report:** I have had particular regard to an evaluation report prepared in accordance with section 32 of the RMA, and I will publicly notify the report when the NES-PF is gazetted.
55. The Minister for the Environment must also be satisfied, under section 43A(3) (b), that the permitted activities in the NES-PF will not have significant adverse effects on the environment. An Assessment of Environmental Effects, and a subsequent review, concluded that the permitted activities in the NES-PF would not have significant adverse effects on the environment.

Regulations Review Committee

56. We do not consider that there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House under the grounds listed in Standing Order 319.

Financial Implications

57. Ongoing costs to MPI and MfE to support and monitor implementation of the NES-PF, update risk assessment tools as new information becomes available, and evaluate the effectiveness of the NES-PF in meeting its objectives will be absorbed within baseline expenditure.
58. The NES-PF will be implemented by councils through normal baseline expenditure, with no plan changes required. Councils will have increased consenting costs (which can be cost-recovered) and increased permitted activity monitoring costs due to increased conditions and associated reporting requirements. If Cabinet agrees, councils will have the option to charge for monitoring some of the permitted activities in the NES-PF through section 36 of the RMA. Conversely, regional and district councils will have reduced planning costs of \$128,000 and \$112,500 per annum respectively as the NES-PF provides a standardised rule set.
59. Foresters will have an increase in compliance costs associated with permitted and consented activities, and increased consenting costs, which will decrease over time with efficiency gains. Conversely, foresters will have reduced plan advocacy costs of approximately 40 percent (\$380,000 nationally) in the first year of implementation, and 50 percent after five years.
60. Twelve months after the NES-PF comes into effect, officials will report to the Minister for the Environment, the Associate Minister for Primary Industries, and Cabinet on the implementation of the NES-PF. This will include any issues which need to be drawn to the attention of Ministers or Cabinet.
61. The effectiveness of implementation and the regulations will be reviewed after three years, with a second wider review to evaluate the effectiveness of the overall NES-PF no later than five years after gazettal, as agreed by Cabinet [EGI-16-MIN-0146 refers].

Certification by Parliamentary Counsel

62. The Order in Council has been certified by the Parliamentary Counsel Office as being fit for submission to Cabinet.

Regulatory Impact Analysis

63. A RIS was prepared in accordance with the necessary requirements and submitted to Cabinet with the policy proposals of the NES-PF in June 2016 [EGI-16-MIN-0146 refers].

64. An additional RIS, with an attached Cost Recovery Impact Statement, has been prepared and is attached to this paper. The RIS includes the policy rationale for enabling councils to charge for monitoring permitted activities in the NES-PF. The Ministry for Primary Industries and the Ministry for the Environment confirm that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation requirements, have been complied with.
65. The Regulatory Quality Team at the Treasury has reviewed the Regulatory Impact Assessment 'Enabling Councils to Charge for Monitoring Permitted Activities under the National Environmental Standards for Plantation Forestry' produced by the Ministry for Primary Industries and dated 17 July 2017. The review team considers that it meets the Quality Assurance criteria. It shows that management conditions for activities permitted under the National Environmental Standards are more likely to deliver environmental benefits if compliance is well monitored and that monitoring may not take place if councils are unable to cover the costs incurred. In the proposed review of the NES-PF it will be important to consider both the costs and benefits of monitoring activity and their incidence.

Publicity

66. The NES-PF incorporates by reference a number of risk assessment tools which will be published on gazettal of the regulations. These tools include the wilding spread risk calculator, the fish spawning indicator, and the erosion susceptibility classification.
67. The cost benefit report on the proposed NES-PF and the Assessment of Environmental Effects will be published on gazettal as agreed by Cabinet [EGI-16-MIN-0146 (16) refers]. The Regulatory Impact Statements and Cabinet's policy decisions on the NES-PF will also be published on gazettal.
68. The Summary of Submissions and Recommendations report and the section 32 evaluation report will be published on gazettal as is required under sections 44(1) and 46A of the RMA.

Consultation

69. The following departments and agencies have been consulted on this paper and their views are reflected: Ministry of Health, Te Puni Kōkiri, Department of Conservation, Ministry for Culture and Heritage, Heritage New Zealand Pouhere Taonga, the Treasury, and the Department of Prime Minister and Cabinet.
70. The following departments have an interest in the paper and have been informed: Department of Internal Affairs, and the New Zealand Defence Force.

71. Ministry of Health (MoH) has raised concerns that dust from logging trucks on unsealed roads presents a significant health issue and would like to see conditions in the NES-PF to manage the adverse effects on air quality. This issue is currently out of scope of the NES-PF and is instead managed by rules in council plans. A Road Dust Working Group²⁰ has been convened which is developing a national strategy and policy to mitigate the impact of road dust, including from logging trucks. MoH agrees that the strategy and policy developed by this group will be the most appropriate mechanism to address the issue in a comprehensive cross-sector manner. There will be an opportunity to consider any outcomes from the Road Dust Working Group at the three-year review of the NES-PF, and guidance will be developed to assist councils and foresters to manage this issue.

²⁰ The Group includes representatives from LGNZ, councils, MoH, NZTA, Department of Conservation, MfE, NZ Forest Owners Association and commercial forestry operations.

Recommendations

72. We recommend that the Cabinet Economic Growth and Infrastructure Committee:

1. **Note** that on 29 June 2016 Cabinet agreed to the policies of the proposed National Environmental Standards for Plantation Forestry (NES-PF) and that it would provide a nationally consistent planning framework for plantation forestry activities [EGI-16-MIN-0146 refers].
2. **Note** that the Minister for the Environment and the Associate Minister for Primary Industries have issued drafting instructions to Parliamentary Counsel for technical changes to give effect to the policy decisions above, as authorised by Cabinet [EGI-16-MIN-0146 (14) refers].
3. **Note** that a provision enabling the use of genetically modified tree stock for afforestation and replanting is not included in the NES-PF.

New policy decision

4. **Note** that the enactment of the Resource Legislation Amendment Act 2017 has resulted in a new provision available for national environmental standards in the Resource Management Act 1991, and that this provision would enable councils to charge for monitoring permitted activities.
5. **Note** that the Minister for the Environment and the Associate Minister for Primary Industries consulted on the use of this provision in the NES-PF to enable councils to charge for monitoring permitted activities and support its inclusion.
6. **Agree** that to ensure effective implementation, councils will have the ability to charge for monitoring permitted activities in the NES-PF that present a higher risk of adverse environmental effects from non-compliance with conditions, and that these are: harvesting, forest quarrying, earthworks, and river crossings.

Statutory requirements

7. **Note** that the Minister for the Environment, alongside the Associate Minister for Primary Industries, considers the statutory requirements in sections 44(1) and 46A of the Resource Management Act 1991 have been met, including:
 - a. a consultation process has been followed for the development of the NES-PF that ensures the public and iwi authorities have had adequate time and opportunity to make a submission on the proposed standard;
 - b. a Summary of Submissions and Recommendations report has been considered and will be publicly notified when the NES-PF is gazetted;
 - c. that the NES-PF is consistent with the purpose of the RMA;
 - d. an evaluation report made in accordance with section 32 of the RMA has been given particular regard, and this report will be publicly notified when the NES-PF is gazetted.

8. **Note** that the Minister for the Environment considers that the permitted activities in NES-PF will not result in significant adverse environmental effects, as is required by section 43A(3)(b) of the RMA.

Making of the regulations

9. **Note** that the 'Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017' will give effect to the decisions referred to in EGI-16-MIN-0146 and in recommendation 6 above.

10. **Authorise** the submission to the Executive Council of the 'Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017'.

Next steps

11. **Agree** that if Cabinet agrees to the recommendations of this paper the Minister for the Environment and Associate Minister for Primary Industries will publicly release this paper (with any appropriate redactions) to meet statutory requirements.

12. **Note** that the review of the Assessment of Environmental Effects conducted by 4Sight Consulting in May 2017 will be publicly released.

13. **Note** that the 'Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017' will come into force on 1 May 2018.

14. **Agree** that twelve months after the NES-PF comes into effect, officials will report to the Minister for the Environment, the Associate Minister for Primary Industries, and Cabinet on the implementation of the NES-PF, including any issues which need to be drawn to the attention of Ministers or Cabinet.

Authorised for lodgement

Hon Dr Nick Smith
Minister for the Environment

Hon Louise Upston
Associate Minister for Primary Industries