

16th June 2017

Spatial, Forestry and Land Management
Regulation and Assurance Branch
Ministry for Primary Industries
PO Box 2526
WELLINGTON 6011

Via email to: NES-PFconsultation@mpi.govt.nz

Dear Minister,

COUNCIL CHARGING TO MONITOR PERMITTED ACTIVITIES IN THE NATIONAL ENVIRONMENTAL STANDARD FOR PLANTATION FORESTRY

Thank you for the opportunity to comment on the Government's proposed provision to the National Environmental Standard for Plantation Forestry which will enable councils to charge to monitor permitted activities.

The Hawke's Bay Regional Council, Hastings District Council and Central Hawke's Bay District Council (the Councils) have prepared this combined submission, with support from Wairoa District Council in respect of this provision introduced by the Resource Legislation Amendment Act 2017. Due to submission deadlines, this submission has not been formally considered by elected representatives of any of the councils before being lodged.

The Councils will pursue (independently) the charging process set out in S36(2), including the process set out in S150 Local Government Act 2002 (LGA) specifying a particular public consultation process. Fees or charges will be recorded in each Councils' Fees and Charges Schedule which will be publicly available and updated annually. Each of the Councils will justify the charges set to their respective communities.

The RMA enables councils to recover costs for monitoring activities regulated by resource consents, but up until the introduction of the Resource Legislation Amendment Act 2017 did not provide for monitoring of permitted activities.

The Councils make this submission in general support of the proposal to amend the NES for Plantation Forestry to enable councils to charge for monitoring of activities that are permitted under that NES. However, we also consider that the proposal requires some amendments which our submission outlines below.

1.0 Permitted Activity Charging

- 1.1 The Councils wish to pursue the provisions introduced by the Resource Legislation Amendment Act 2017. This enables provisions in a National Environmental Standard (NES) to charge for the monitoring of permitted activities if outlined in the National Environmental Standard for Plantation Forestry (NES-PF) and enabled by the new S43A(8) RMA.
- 1.2 S43A(8) RMA states: "*A national environmental standard may empower local authorities to charge for monitoring any specified permitted activities in the standard.*"
- 1.3 The Government proposes to include a clause in the NES-PF that will enable councils to charge for monitoring the permitted activities the NES contains.

2.0 Roles of local government

- 2.1 Erosion is common within Hawke's Bay as the region is regularly affected by intense storms, and as such forest harvesting requires careful management in this sensitive environment. There are currently 130,000 hectares under pines within the Hawke's Bay region. The annual harvested area will double in the next few years in the region. The additional harvested area is largely in erodible hill country. This brings new challenges for management of environmental activity for forest engineering and harvesting, and a new level of required resourcing.
- 2.2 Until the recent amendment to the Resource Management Act under the Resource Legislation Amendment Act, councils have not had the ability to charge for monitoring permitted activities. As such, Hawke's Bay councils do not routinely monitor permitted activities under the current regional and district plans. There are exceptions such as when a council is made aware of an activity that is not complying with the appropriate permitted activity rules. This then can become an enforcement issue where costs/fines can be imposed, but this not a substitute for recovery of costs for monitoring performance of activities (e.g. forestry operations) against the relevant rules in regional and district plans. The absence of monitoring permitted activities is primarily a consequence of a lack of financial and subsequently human resource.
- 2.3 The aim of the NES-PF is to provide nationally consistent rules that remove unwarranted variation between councils' RMA rules for plantation forestry and require foresters to meet best-practice forestry standards in carrying out their operations.
- 2.4 The roles of Councils, particularly the regional council, in plantation forestry has and will continue to evolve as a result. Consequently, we consider some form of monitoring is deemed appropriate for permitted activities. We support the Ministry's proposal to impose charges for monitoring permitted activities, and agree that the councils' costs for this monitoring should be fully recoverable from the foresters, i.e. the resource user and not the local ratepayer.

3.0 Permitted Activities for which Councils could fix charges for monitoring

- 3.1 Table 1: Permitted activities for which Councils could fix charges for monitoring
- 3.2 The activities proposed within Table 1 (MPI Discussion Paper No.2017/16) appear to be reasonably detailed, and encompass the majority of those permitted activities undertaken within the plantation forestry operations.
- 3.3 However, the Councils recommend that the Earthworks section is amended to incorporate reference to appropriate benching of slopes and compaction of fill. We consider this is necessary as the required compaction and containment are not possible without correct benching. These matters are critical to preventing earthworks failures and loss of sediment to water, in many instances. We would therefore recommend that this reference be incorporated in the text.
- 3.4 We would further recommend that a caveat be included in the instance that other permitted activities (not included within the list) which may arise in the future can also be adopted as chargeable. This will ensure the NES-PF is future proofed.
- 3.5 Notwithstanding this, the Councils support the list identified in Table 1 as proposed.
- 3.6 Monitoring and Administration
- 3.7 Section 43A(8) of the amended RMA states that "*A national environmental standard may empower local authorities to charge for monitoring any specified permitted activities in the standard.*" The concern with the legislation as worded is that it is limited to the charging of monitoring only. Part 5 of the Discussion Paper 2017/16 states that "*for permitted activities under the NES, monitoring could start any time after the activity has commenced*". That being the case there are number of 'administration' activities which occur prior to the commencement of the activity which would ordinarily incur a cost to the Council but for which a charge cannot be applied under the new provision (as worded).
- 3.8 The NES-PF requires harvest plans, quarry erosion and sediment management plans and forestry earthwork management plans to be prepared. Whilst they do not necessarily have to be provided to the relevant Council(s) they must be provided if requested. A cost will be incurred by councils for their staff to receive, administer and review these plans. We anticipate

that the work required would essentially be a desk-based assessment of those documents provided by the forester. The Discussion Paper suggests that such an assessment would be deemed to be 'administrative' and 'pre-commencement' and therefore could not be charged for. This has potential for perverse unintended practices. For example, should there be no ability for councils to recover their reasonable costs incurred (i.e. impose user charges) to check these plans, there is the potential for Councils to avoid requesting them. Under-resourcing through lack of finance could place unnecessary burden on the Councils and in turn impact the forestry industry, particularly where requests for scrutiny of plans are unable to be accommodated.

- 3.9 Part 6 of the Discussion Paper 2017/16 goes on to state that “*Administrative conditions would be excluded.*” If there is merit in Councils’ experts viewing harvest or sediment management plans to determine adequacy, it is likely that there is need for monitoring (and charging) to commence before the specific harvesting or other activities commence.
- 3.10 The RMA enables councils to recover their costs for the administration of resource consents (s36(c)). As currently worded there is no capacity to recover administrative costs for monitoring those activities permitted by the NES-PF. The Councils suggest that the action of reviewing harvest plans (and various other management plans) is necessary to determine whether the activities are appropriate and address the effects on the environment. This desktop analysis is essentially a legitimate form of monitoring the resource use, albeit in a proactive rather than reactive sense, but necessary nonetheless.

4.0 Recommendations

- 4.1 Amend Table 1 ‘Earthworks’ to include reference to the appropriate benching of slopes and compaction of fill.
- 4.2 To provide a caveat following Table 1 to allow for other permitted activities (not included within the list) which may arise in the future to be adopted as chargeable.
- 4.3 To make provision for councils to charge for administration costs incurred when assessing harvest plans and earthwork management plans. These activities should be accepted as proactive monitoring and not considered as narrowly administrative exercises.
- 4.4 As such we make the following suggested amendment to Table 1. (Insert text in *italics*)

General description of activities the NES will apply to	General focus for permitted activity requirements
<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 • <i>To prevent earthwork failures and loss of sediment to water through appropriate benching of slopes and compaction of fill</i>
<p>Harvest Management Plans <i>Preparation and submission of Harvest Management Plan to council for review</i></p>	<p>Measures include those to:</p> <ul style="list-style-type: none"> • <i>Manage environmental effects of harvesting</i> • <i>Determine permitted activity thresholds</i> • <i>Confirm permitted activity measures are realistic</i>

<p>Earthworks Management Plan Preparation and submission of Earthworks Management Plan to council for review</p>	<p>Measures include those to:</p> <ul style="list-style-type: none"> • Manage environmental effects of proposed earthworks
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5.0 Conclusion

- 5.1 The Councils consider that the proposed provision to charge to monitor permitted activities within the plantation forestry industry is wholly appropriate and necessary, and as such support the inclusion of this instrument in the NES-PF. We look forward to similar charges for cost recovery within other NESs and regulations in due course.
- 5.2 We thank the Ministry for the opportunity to make comment on this Discussion Paper.
- 5.3 The contact person as an address for service in respect of this submission is:

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Yours sincerely

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