



# Assessment of the implications of changes to the draft National Environmental Standard for Plantation Forestry

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**ASSESSMENT OF THE IMPLICATIONS OF  
CHANGES TO THE DRAFT NATIONAL  
ENVIRONMENTAL STANDARD FOR  
PLANTATION FORESTRY**

for

Ministry for Primary Industries

May 2017

## REPORT INFORMATION AND QUALITY CONTROL

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## EXECUTIVE SUMMARY

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### Introduction

The Ministry for Primary Industries (MPI) has been leading a process to achieve greater national consistency in the management of plantation forestry under the Resource Management Act 1991 (RMA) through the development of a National Environmental Standard for Plantation Forestry (the NES-PF).

In 2016, MPI commissioned an evaluation of the effectiveness of the NES-PF prior to Cabinet decision making on the NES-PF (Indicative Draft). The Boffa Miskell evaluation was focused on providing a scientific assessment of effects and comparison of existing plan rules to the NES-PF rules and conditions and concluded that:

*“The permitted activity provisions of the NES-PF require appropriate, best-practice conventional plantation management practices to be applied. The NES-PF allows for additional stringency to be applied where appropriate. This overall approach effectively ensures that the NES-PF limits the requirement for resource consent to the most severe end of the risk threshold and that no significant residual effects arise from activities that are permitted”.*

Since the Boffa Miskell evaluation was undertaken, further changes to the NES-PF have occurred including the greater separation of regional council and territorial authority functions associated with the activities in the NES-PF regulations.

4Sight Consulting Limited (4Sight) have been engaged to confirm the robustness of the current draft set of regulations (the Exposure Draft) before they go to Cabinet in July. This requires an additional analysis of:

- 1) Any impacts of changes made from the Indicative Draft to the Exposure Draft of the NES-PF;
- 2) Whether the jurisdiction allocated to provisions are appropriate, and whether there are any ‘gaps’ created by the allocation of functions; and
- 3) Broadly identify risks associated with the re-allocation of functions, including whether the changes will have any material impact of the assessment of environmental effects undertaken by Boffa Miskell.

The review is focussed on four key Plantation Forestry activities being earthworks, forestry quarrying, harvesting, and mechanical land preparation. Consideration was also given to how these activities interfaced with relevant Ancillary Activity and General Provisions.

### Approach

The rules of the Indicative Draft and Exposure Draft were aligned to facilitate identification of changes between the two drafts. An initial assessment was then applied to identify ‘potentially material’ changes or issues, noting that in the main there is significant consistency between the Indicative and Exposure Drafts. ‘Potentially material’ changes and issues were the subject of a discussion with the client and considered in more detail. In respect of matters of jurisdiction, the assessment referred primarily to functions of regional councils and territorial authorities as prescribed in the RMA, primarily sections 30 and 31, but also sections 13, 14 and 15. No assessment of regional and district plans was undertaken, as this was done in the Boffa Miskell evaluation.

### Conclusions

Our assessment has concluded the following:

#### **Risks in achieving the ‘no significant adverse effects’ test**

In our view the changes in jurisdiction and content that have occurred between the Indicative and Exposure Drafts has not altered the conclusion of the Boffa Miskell evaluation. However, we note that a significant assumption of this evaluation was consistent compliance with all of the rules, controls and conditions.

It is appropriate to assume compliance. However, in our view, the most significant risk of adverse effects is where there is non-compliance with the ‘best practice’ controls and standards. Non-compliance with erosion and sediment requirements, inappropriate methods of harvesting (particularly adjacent to streams and wetlands) and inappropriate management of slash etc can lead to significant sediment discharges or changes in hydrological flow that can

significantly affect downstream water bodies, ecosystems and potentially communities. To effectively manage this risk requires the commitment of the forestry operators in undertaking the activity in accordance with the requirements of the NES-PF regulations and regional councils/territorial authorities in ensuring compliance.

#### **Does the use of permitted activities meet the ‘no significant effects’ test?**

This question sought a view on whether the activities, with no activity specific conditions and no threshold for consent triggered by the Erosion Susceptibility Calculator (ESC) zoning in relation to territorial authority functions, will result in any significant adverse effects on the environment.

In our view the application of permitted activities to all but the most severe erosion classes, without area or other scale thresholds, and applying smaller setbacks to perennial streams less than 3 metres in width, places the risk of significant adverse effects very much at the upper end of the ‘risk spectrum’. However, we do not have the benefit of a detailed assessment of existing rules and controls to advise whether the thresholds at which the requirement for a resource consent is triggered are appropriate or not.

Accordingly, we defer to the Boffa Miskell assessment that the controls represent best practice and the approach effectively ensures that no significant residual effects arise from activities that are permitted – provided the permitted activity rules and conditions are complied with.

We reiterate our view that ensuring compliance is critical for potential adverse effects to be effectively managed. The assignment of the responsibilities of the four assessed Plantation Forestry activities almost solely to regional councils will reduce the ‘pool’ of officers available to assess compliance, unless this is otherwise resourced.

#### **Does the change in jurisdiction impact the Boffa Miskell evaluation?**

In our view, the changes in jurisdiction have little, if any, impact on the Boffa Miskell evaluation. Most of the permitted activities rules were assigned to regional councils in the Indicative Draft and the changes generally reflect the RMA functions of regional councils or are functions where there is a joint responsibility such that assigning sole jurisdiction to regional councils does not ‘lose’ any relevant controls.

One of the key changes is assigning the consenting function for earthworks, mechanical land preparation, forestry quarrying and harvesting in high/very high erosion prone land solely to regional councils. In the Indicative Draft, resource consents were required from both regional council and territorial authorities in these areas, although the Indicative Draft was silent as to what aspects were to be controlled by territorial authorities as there was no ‘default’ territorial authority consent rule. In our view, the issues/effects associated with the ESC (such as erosion, soil conservation and potentially natural hazards) align closely to regional council land use and discharge functions under RMA s 30 such that there does not appear to be any effects or activities that are ‘lost’ by making resource consents in high/very high erosion prone areas the sole responsibility of regional councils. In our view the key issue is ensuring that this responsibility is clear. To assist with this, we have suggested additional matters of discretion in Rule 34.

#### **Is the split of functions in the NES-PF correct?**

In our view, the split of functions for the four Plantation Forestry activities that are the subject of the review are largely correct. We have identified some functions that are ‘grey’. That is, where the responsibility is not entirely clear under the functions of councils under RMA s 30 and s 31. An example of this is engineering design, geotechnical and construction considerations associated with roads and fills. However, we consider that it is likely that most regional councils already consider such matters for these activities and the assignment of sole jurisdiction to regional councils is not a significant issue, provided these responsibilities are clear.

We have also identified two rules in the ‘Ancillary Activities’ and ‘General Provisions’ of the Exposure Draft (rules 90/91 – Indigenous vegetation clearance and disturbance, and rules 98/99 – Indigenous bird nesting), which we consider would be more appropriately assigned to territorial authorities given their more specific functions in respect of indigenous biological diversity under RMA s 31(1)(b)(iii). Notwithstanding this viewpoint, it is considered that assigning the responsibility for these rules jointly to regional councils (given their overlapping functions under RMA s30(1)(ga)) is unlikely to have a significant impact on the implementation of the NES-PF.

## 1 SCOPE OF ASSESSMENT AND APPROACH

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### 1.1 Project purpose

The Ministry for Primary Industries (MPI) has been leading a process to achieve greater national consistency in the management of plantation forestry under the Resource Management Act 1991 (RMA) through the development of a National Environmental Standard for Plantation Forestry (the NES-PF).

MPI has worked collaboratively with members from the forestry sector, local government, environmental NGOs and other central government agencies to develop a nationally consistent set of planning rules for the eight activities that make up the plantation forestry production cycle. There are three supporting risk assessment tools that underpin the rules relating to these activities; the Erosion Susceptibility Calculator (ESC), the fish spawning indicator and the wilding conifer risk calculator.

In 2016, MPI commissioned an evaluation of the effectiveness of the NES-PF prior to Cabinet decision making on the NES-PF (Indicative Draft). This evaluation was undertaken by Boffa Miskell<sup>1</sup> and its purpose was to:

*'Assess the effectiveness of the NES-PF rules, whether the NES-PF permitted activities result in any activities (with associated conditions) that have significant adverse effects on the environment, and to determine the residual risk levels after implementation of these management rules'.*

The Boffa Miskell evaluation was focused on providing a scientific assessment of effects and comparison of existing plan rules to the NES-PF rules and conditions. The evaluation was not focussed on how the functions and responsibilities for the various aspects of the plantation forestry activity were allocated between regional councils and territorial authorities. The evaluation concluded (page 2):

*"The permitted activity provisions of the NES-PF require appropriate, best-practice conventional plantation management practices to be applied. The NES-PF allows for additional stringency to be applied where appropriate. This overall approach effectively ensures that the NES-PF limits the requirement for resource consent to the most severe end of the risk threshold and that no significant residual effects arise from activities that are permitted".*

Since the Boffa Miskell evaluation was undertaken, further changes to the NES-PF have occurred including the greater separation of regional council and territorial authority functions associated with the activities in the NES-PF regulations.

4Sight Consulting Limited (4Sight) have been engaged to confirm the robustness of the current draft set of regulations (the Exposure Draft) before they go to Cabinet in July. This requires an additional analysis of:

- 1) Any impacts of changes made from the Indicative Draft to the Exposure Draft of the NES-PF;
- 2) Whether the jurisdiction allocated to provisions are appropriate, and whether there are any 'gaps' created by the allocation of functions; and
- 3) Broadly identify risks associated with the re-allocation of functions, including whether the changes will have any material impact on the assessment of environmental effects undertaken by Boffa Miskell.

This analysis will, in part, inform the NES-PF section 32 evaluation reporting.

### 1.2 Project Terms of Reference and scope

The scope of this review has been limited to the following Plantation Forestry activities:

- Earthworks;
- Quarrying;

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<sup>1</sup> Boffa Miskell Limited 2016. NES for Plantation Forestry: Evaluation of effectiveness of NES on Environmental Outcomes. Report prepared by Boffa Miskell Limited for Ministry for Primary Industries.

- Harvesting;
- Mechanical Land Preparation; and
- Relevant Ancillary Activities and General Provisions (as they relate to the above four activities).

In accordance with the Terms of Reference, these rules have been assessed in order to determine:

- Any risks relating to the rules, as currently drafted, in achieving the ‘no significant adverse effects’ test required under s43A (3) of the Resource Management Act (RMA);
- Whether the activities, with no activity specific conditions and no threshold for consent triggered by erosion susceptibility classification zoning, in relation to territorial authority functions, will result in any significant adverse effects on the environment. Again, this is required in order to determine whether the rules will achieve the ‘no significant adverse effects’ test required under section 43A (3) (b) of the RMA;
- Whether the change in functions between councils’ authorities would have an impact on the assessment made by Boffa Miskell for the above activities and briefly describe how; and
- Whether the split of functions in the NES-PF for the four in-scope activities is correct.

## 1.3 Background

### 1.3.1 Overview of NES requirements for permitted activities

National Environmental Standards are regulations issued under Section 43 of the RMA. A NES sets out technical standards, methods, or requirements for activities or outcomes under that Act. Section 43A sets out the content of NESs. The NES-PF (as provided for under sections 43–44A of the RMA) establishes a technical standard for forestry activities and sets out when an activity is permitted and when consent is required. Section 43A(3) of the RMA states that where an activity has a significant adverse effect on the environment a NES may not allow this activity to occur without resource consent.

### 1.3.2 Overview of RMA s30 and s31 functions

Section 30 and section 31 of the RMA sets out the statutory responsibilities of regional councils and territorial authorities respectively. Regional councils and territorial authorities have both separate and overlapping functions in respect of the management of land use and other activities. Sections 13, 14 and 15 also cover duties and restrictions under the RMA relating to river and lake beds, water and discharges.

These sections of the RMA are important to this review as they have been used as the primary determinant of where jurisdiction should lie between regional councils and territorial authorities for the assessed Plantation Forestry activities and whether the jurisdiction changes between the Indicative and Exposure Drafts of the NES-PF are appropriate and do not give rise to significant adverse effects.

A copy of the relevant sections of the RMA are attached as **Appendix A**.

## 1.4 Approach to assessment

The following approach was implemented for this assessment:

- 1) The rules of the Indicative Draft and Exposure Draft were aligned to facilitate identification of changes between the two drafts.
- 2) The two rule sets were subject to an initial assessment to identify ‘potentially material’ changes or issues – that is, those changes or issues that required further consideration. In this regard, it is noted that, in the main, there is significant consistency between the Indicative and Exposure Drafts. This assessment included:
  - a) Jurisdiction – including both changes in jurisdiction between the two drafts and identifying areas where jurisdiction may not be appropriate;
  - b) Changes in content;
  - c) Changes in activity status.

The result of this initial assessment is provided in **Appendix B**. Jurisdiction (regional council or territorial authority or joint) is colour coded for both the Indicative and Exposure Drafts. ‘Potentially material’ changes are highlighted in green.

- 3) These ‘potentially material’ changes and issues were the subject of a discussion with the client to discuss other information or considerations that may be relevant to the review.
- 4) Where ‘potentially material’ changes or issues were identified, these were considered in more detail. The result of this assessment is provided in Section 2 below – in both Table 1 and in the summary of the assessment.

While not part of the scope of this review, a range of other issues were identified. These primarily related to the scope and wording of rules and associated conditions. These issues have been provided independently to this report to assist with refinement of the Exposure Draft.

## 1.5 Limitations

This review is solely focused on the changes to the NES-PF provisions between the Indicative Draft and the Exposure Draft. It was undertaken independently of other work on the NES-PF and was not privy to background research, submissions and other information associated with the development and refinement of the NES-PF. In terms of adverse effects, it relies on the conclusions of the Boffa Miskell report in respect of significant adverse effects, except where a potentially material change has been identified.

The short timeframe for the report has precluded an assessment of regional and district plans. Accordingly, the review has not sought to ascertain whether the rules and conditions represent best practice – for instance whether controls, setbacks etc are appropriate. It has been assumed that the provisions have resulted from collective input from a range of parties to reflect current best practice. We note that the Boffa Miskell evaluation (p34) confirms that this is the case in its conclusion that:

*“the permitted activity provisions of the NES-PF require appropriate, best-practice conventional plantation management practices to be applied and allows for additional stringency to be applied where appropriate.”*

## 2 ASSESSMENT OF CHANGES

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### 2.1 Introduction

**Appendix B** provides an initial assessment of provisions for the four in-scope areas identified above together with the Ancillary Activities and General Provisions. This initial assessment aligned the respective provisions of the Indicative and Exposure Drafts and then identified whether:

- There is a change to the jurisdiction for the function between the two drafts;
- There is a change to the provisions between the two drafts;
- The jurisdictional functions in the Exposure Draft were generally appropriate (in terms of the respective RMA functions of regional councils and territorial authorities); and
- There were any other issues or concerns with the provisions – primarily whether resource consent requirements (matters of control/discretion) were sufficiently comprehensive to address the circumstance where permitted activity rules were not able to be complied with, particularly where jurisdiction was ‘grey’.

Changes or issues/concerns that were identified as being potentially material were then highlighted for further detailed consideration in respect of the appropriateness and/or effect of the change. In the main the changes between the two drafts were relatively few, with the Exposure Draft closely following the content and wording of the Indicative Draft in most cases.

### 2.2 Assessment of potentially material changes

Table 1 below provides an assessment of each of the issues/changes that were identified as being potentially material.

Table 1: Assessment of Material Changes between Indicative and Exposure Drafts

Section/Rule	Change/Issue	Discussion	Effect of Changes/Appropriateness of Jurisdiction
<b>Earthworks</b>			
General Rule n1 (ID <sup>2</sup> ) Rules 23 & 24 (ED <sup>3</sup> )	<p>This change removes responsibility for managing the forestry earthworks function from TA<sup>4</sup>s with all responsibilities being the jurisdiction of regional councils. The only TA-administered rule remaining in the ED is a requirement for the TA to be notified prior to soil disturbing activities commencing (Rule 25).</p> <p>Note that while the rule n1 of the ID indicated that earthworks in most ESC zones are permitted for both RC<sup>5</sup>s and TAs, consent requirements under restricted activity rule n3 in high/ very high erosion prone zones is only assigned as a RC rule. That is, there was no default rule for TAs consents in high/ very high erosion prone zones under the ID. Under</p>	<p>Under the ID, most aspects of the forestry earthworks function were assigned to RCs with some rules being assigned to TAs. Those rules are discussed below.</p> <p>The Boffa Miskell effectiveness review identified the primary adverse effects of this activity as being sediment discharges to waterways, erosion/soil damage, effects on cultural sites and degradation of significant terrestrial/wetland biodiversity. These adverse effects primarily lie within the jurisdiction of RCs under RMA s 30. Accordingly, if jurisdiction is being assigned to only one party, it is logical for this to be RCs given their more extensive and specific RMA functions.</p> <p>Note later assessments in respect of jurisdiction for terrestrial biodiversity.</p>	<p>The effect of individual changes and associated jurisdiction are assessed below.</p> <p>However, it is considered appropriate for the jurisdiction for forestry earthworks activities to lie with RCs if it is to sit with only one party. RCs have both broader and more specific functions under RMA s 30 for managing soil erosion, natural hazards and discharges.</p> <p>The assignment of all aspects of the earthworks functions to RC is considered unlikely to affect the conclusions of the Boffa Miskell effectiveness assessment. The responsibility for the majority of permitted activity rules was already assigned to RCs and it is assumed that compliance and consenting functions will continue to be undertaken – albeit only by RCs.</p>

<sup>2</sup> ID – Indicative Draft

<sup>3</sup> ED – Exposure Draft

<sup>4</sup> Territorial Authority

<sup>5</sup> Regional Council

	the ED, TAs have no consenting function in high/ very high erosion prone zones.		
Road widening and realignment Rule n1(3) (ID) Rule 24(3) (ED)	This change assigns responsibility for earthworks associated with road widening and realignment to RCs. Under the ID the function was the joint responsibility of RCs and TAs.	<p>While the primary activity is earthworks, several of the conditions of rule 24(3), for example (b) and (c), include requirements that appear to be related to engineering design, geotechnical or construction of the road. Generally, these considerations would come under the purview of TAs, due to their broad functions in respect of the management of the effects of land use (RMA s 31(1)(b), rather than the more specific land use controls of RCs under RMA s 30(1)(b).</p> <p>However, engineering design, geotechnical and construction considerations are also likely to be already covered by most RCs in undertaking their functions associated with earthworks. For example, the Auckland Unitary Plan includes policies that require that the design and implementation of earthworks should recognise “<i>specific engineering requirements</i>” and that “<i>earthworks are designed and undertaken in a manner that ensures the stability and safety of surrounding land, buildings and structures</i>”. These policies apply to both regional and district earthwork activities<sup>6</sup> reflecting the overlapping nature of these functions.</p>	<p>While the assignment of jurisdiction for this function to RCs is questioned, it is not considered a significant issue as engineering design, geotechnical or construction considerations are already likely to be addressed by RC as part of their current earthworks functions.</p> <p>Accordingly, assigning this aspect of the earthworks functions to RCs is considered unlikely to affect the conclusions of the Boffa Miskell effectiveness assessment.</p>
Setbacks Rule n1(11) (ID)	This change relates to the removal of the setback from Significant	Earthwork setbacks have been provided in the NES rules for a variety of natural environments (rivers, lakes	It is unlikely that this change will have a material effect on the conclusions of the Boffa Miskell effectiveness assessment. There are a number of provisions in the

<sup>6</sup> Policies E11.3.5 and 6 (Regional) and Policies E12.3.5 and 6 (District)

<p>Rule 28(1) ED</p>	<p>Natural Areas (SNAs) between the ID and ED.</p> <p><i>Note this change in setback also occurs in the other reviewed aspects of the plantation forestry activity that have been assessed – mechanical land preparation, forest quarrying and harvesting – but is not repeated below.</i></p>	<p>wetlands etc). An additional setback from SNAs was included in the ID, but not transferred to the ED.</p> <p>It is understood that the basis for removing this setback is to correct an error in the Indicative Draft in that the setback is applied to new afforestation, thus removing the requirement for a setback during subsequent forestry activities. The effect of this change is unlikely to be significant as:</p> <ul style="list-style-type: none"> <li>▪ The setback applies to afforestation, thus protecting SNAs in new forest areas;</li> <li>▪ Some SNAs will be wetlands and hence subject to setbacks;</li> <li>▪ SNA are able to be subject to more stringent rules than those of the NES-PF (ED Rule 6(2)); and</li> <li>▪ Rules in respect of Ancillary Activities ensure that there is no more than incidental damage to indigenous vegetation in a SNA (Rule 90(2)(f)).</li> </ul> <p>At face value, this change may increase the risk of damage by earthworks to edge vegetation in SNAs. However, as indicated above, other provisions are in place to minimise the risk of damage to vegetation in a SNA.</p>	<p>NES-PF (ED) to ensure adverse effects on SNAs are not significant.</p>
<p>Fill Rule n1(14) (ID) Rule 29(1) (ED)</p> <p>Spoil Rule n1(15) (ID)</p>	<p>These changes relate to the placement of fill and the disposal of soil. Under the ID they were joint RC/TA functions but have been assigned to RCs under the ED.</p>	<p>This is a similar issue to road widening above, in that there are overlapping responsibilities across RCs and TAs for the management of fill and spoil disposal.</p> <p>Again however, engineering or geotechnical considerations are likely to be already covered by most RCs in undertaking their functions associated with earthworks as discussed above.</p>	<p>While the assignment of jurisdiction for this function to RCs is questioned, it is not considered a significant issue as engineering, geotechnical and fill composition considerations are already likely to be addressed by RC as part of their earthworks/cleanfill functions.</p> <p>Accordingly, assigning this aspect of the earthworks functions to RCs is considered unlikely to affect the</p>

Rule 29(2) (ED)		Additionally, most regional plans have rules relating to various classes of fills – from clean fills through to landfills. Accordingly, RCs will likely already be implementing controls relating to the composition of fill material.	conclusions of the Boffa Miskell effectiveness assessment.
Earthworks Restricted Activity Rule 34 (1 & 2) (ED)	This is not a change between the ID and ED versions. However there appears to be a rule “gap” in that there is no consent activity class stated for infringements of rules 24(2) and 24(3).	RMA Section 87B(1)(b) deals with the circumstance where a plan requires a resource consent but does not specify the class of consent. In this circumstance the activity is a discretionary activity. However, there does not appear to be an equivalent clause for a NES.	It is recommended that Rule 34 be expanded to include infringements of Rules 24(2) and 24(3).  However, should it remain a gap in the ED then it is likely that infringements of these rules would be assessed as a discretionary activity. This appears relatively onerous given the very specific nature of the rules and infringements, particularly given the broad and extensive forestry earthworks activities that otherwise default to a restricted discretionary activity.
Earthworks Restricted Activity Matters of Discretion Rule 34 (3) (ED)	Given the assessment above on rules 24(2) 24(3), 29(1) and 29(2), particularly in relation to engineering design, geotechnical and construction matters, it is considered that the matters of discretion in rule 34 (3) are not sufficiently broad to address infringements of the PA rules.	Rule 34(3) lists a range of matters to which discretion has been restricted. However, given the concern raised above about potential engineering design, geotechnical and construction issues and other infringements it is considered that the matters of discretion should be expanded to explicitly address these matters and make it clear that they are subject to consideration through a consent process (where the permitted activity is not met). In particular, the following additional matters of discretion (or similar) are recommended:  <ul style="list-style-type: none"> <li>▪ Engineering design, geotechnical and construction requirements for roads and fill areas;</li> <li>▪ The nature and composition of fill material.</li> </ul>	It is recommended that additional matters of discretion be added to ensure that PA infringements are fully covered – although it is noted that other requirements (road standards, clean-fill requirements etc) are likely to apply.  Note that this does not affect the Boffa Miskell assessment regarding the effect of the permitted activity standards as it relates to consent requirements in the circumstances where the permitted activity cannot be complied with.
<b>Mechanical Land Preparation</b>			

<p>Rule n1 (1) (ID) Rules 71 (1) and (2)</p>	<p>This change assigns jurisdiction for managing all aspects of land preparation to RCs. Under the ID, jurisdiction was jointly held by RCs and TAs – although responsibility for individual rules was assigned to RCs. Similarly, there was no default TA rule for infringement of rule n(1).</p>	<p>It was not clear in the ID what functions were assigned to TAs under this rule set, as there was no equivalent TA restricted discretionary activity rule. As indicated while the over-arching rule indicated joint jurisdiction, the individual rules (including where restricted discretionary consents were required) were all assigned to RCs such that it was unclear what role the TA would play.</p>	<p>It is considered appropriate for the jurisdiction for mechanical land preparation activities to be assigned to RCs as the majority of the management issues/adverse effects relate to soil erosion, sediment discharge and protection of freshwater environments and the CMA. These are appropriately managed by RCs in accordance with their functions under RMA s 30.</p> <p>This change will not affect the conclusions of the Boffa Miskell effectiveness review, noting that the majority of permitted activities were assigned to RC under the ID.</p>
<p>Rule n1 (2) (ID) Rule 93 (ED)</p>	<p>This change assigns jurisdiction for managing activities such as disturbance of the bed of a lake or river, the diversion of water and the discharge of sediment or slash to RCs. Under the ID, it was identified as joint jurisdiction.</p>	<p>The management of these activities is a function of RCs under RMA s 30. Note also that there was some inconsistency in the ID as these activities were assigned to RCs (not joint) in other sections (e.g. earthworks)</p>	<p>It is considered appropriate for the jurisdiction for these activities to be assigned to RCs, consistent with their functions under RMA s 30. This change appears to correct an error and will not affect the conclusions of the Boffa Miskell effectiveness review.</p>
<p><b>Forestry Quarrying</b></p>			
<p>Rule n1 (1) (ID) Rules 50 (1) and (2)</p>	<p>This change provides greater distinction between RC and TA functions. However, the primary change is the assignment of all responsibilities for forestry quarrying to RCs, other than those explicitly related to TA functions (e.g. visibility, traffic and setbacks from houses).</p>	<p>While overall the activity was assigned jointly to RCs and TAs, responsibility for individual PA rules was assigned to either RCs or TAs. Rule infringements appear then to trigger a consent from both parties, irrespective of ‘whose’ rule was infringed. The changes in jurisdiction provide a clearer differentiation of responsibilities, but do not materially change which party has jurisdiction for each individual rule. Consent requirements (and associated jurisdiction) have been retained, but are better aligned to specific rules.</p>	<p>There does not appear to be any significant change to jurisdiction, but rather a better alignment of consent rules (Rule 59 and 60) to the respective permitted activity rules.</p> <p>In general, the assignment of jurisdiction is consistent with RC and TA functions under RMA s 30 and 31.</p> <p>This change does not affect the conclusions of the Boffa Miskell effectiveness review.</p>

Rule n1 (2) (ID) Rule 93 (ED)	As for Mechanical Land Preparation above.	As for Mechanical Land Preparation above.	As for Mechanical Land Preparation above.
Rule n4 (ID) Rule 60 (2) (ED)	Previously joint matters of discretion have been assigned to TAs under rule 60.	<p>There is some overlap between the matters of discretion in rule 60 (2) (TA) and matters of controlling Rule 59 (4), although this is minor. Further rationalisation and differentiation of matters of control/responsibility could be considered to reduce overlap including:</p> <ul style="list-style-type: none"> <li>▪ Clause (c) – should refer to the disposal of ‘excavated soil’ rather than ‘fill’ to be more consistent with Rule 53.</li> <li>▪ Clause (d) – mirrors regional council controls and appears to largely relate to sediment runoff/erosion.</li> <li>▪ Clause (f) -it is not clear what TA rule this clause relates to.</li> </ul>	The jurisdictional overlap is minor and does not affect the conclusions of the Boffa Miskell effectiveness review.
<b>Harvesting</b>			
Rule n1 (1) and (2) (ID) Rules 62 (1), (2) and (3)	<p>As for other activities discussed above, the change provides greater distinction between RC and TA functions.</p> <p>Again the primary change is the assignment of all responsibilities for forest harvesting to RCs, whereas the ID indicated that this was a joint responsibility. Under the ED, notification of the relevant TA is the only TA rule/control.</p>	<p>As for earthworks above, while overall the activity was assigned jointly to RCs and TAs, responsibility for individual PA rules was assigned to RCs. Under the ID, rule infringements appear then to trigger a consent from both parties. The changes in jurisdiction align consent responsibilities with those of the PAs in the ID and ED.</p> <p>In general, management of harvesting is primarily focused on adverse effects such as discharges of sediment and slash; the disturbance of water bodies, their margins and the CMA through setbacks and the</p>	<p>There does not appear to be any significant change to jurisdiction, but rather a better alignment of consent rules to the respective permitted activity rules.</p> <p>The assignment of jurisdiction is consistent with RC functions under RMA s 30 and regional plan requirements under s 13, 14 and 15.</p> <p>These changes do not affect the conclusions of the Boffa Miskell effectiveness review.</p>

		management of felling activities; and the management of slash to minimise effects of hydrology and flows. The management of these activities aligns with RC functions under RMA s 30 and regional Plan requirements under s 13, 14 and 15 and hence are appropriately assigned to RCs.	
Rule n1 (3) (ID) Rule 93 (ED)	As for Mechanical Land Preparation above.	As for Mechanical Land Preparation above.	As for Mechanical Land Preparation above.
<b>Ancillary Activities - Slash Traps</b>			
Rule n1 (1) (ID) Rule 80 (1) and (2)	This change assigns all rules associated with slash traps to RCs.	<p>As for other activities above, while overall the activity was assigned jointly to RCs and TAs in the ID, responsibility for individual PA and consent rules was assigned to RCs. The ID was silent on whether there was a requirement for consent from the TA for infringements of the rules.</p> <p>In general, the activities and adverse effects associated with slash traps come under the functions of RCs under RMA s 30 and regional Plan requirements under s 13, 14 and 15 including discharges of sediment and slash, disturbance of the bed of a lake or river, the potential to dam/divert surface water, erosion, fish passage etc and therefore are appropriately assigned to RCs.</p>	<p>There does not appear to be any significant change to jurisdiction, but rather a better alignment of consent rules to the respective permitted activity rules.</p> <p>The assignment of jurisdiction is consistent with RC functions under RMA s 30 and regional plan requirements under s 13, 14 and 15.</p> <p>These changes do not affect the conclusions of the Boffa Miskell effectiveness review.</p>
Rule 80 (2)	This rule appears deficient in that it only refers to installing a slash trap in a bed of a river.	RMA s 13 controls structures “ <i>in, on, under, or over the bed</i> ” of a river through provisions in a regional plan. It is considered that to be consistent with RMA s 13, the rule should refer to slash traps “ <i>in, on or over a bed of a river....</i> ”.	This is a minor correction and does not affect the conclusions of the Boffa Miskell effectiveness review.

<b>Ancillary Activities - Indigenous Vegetation Clearance and Disturbance</b>			
<p>Rule n1 (1) (ID) Rule 90 (1) and (2)</p>	<p>These rules are assigned jointly to both RC and TA under both the ID and the ED.</p>	<p>The assignment of joint jurisdiction of this function is questioned. While RMA s 30 and 31 assign functions to both RC and TA for maintaining indigenous biodiversity, RC functions are limited to the “establishment, implementation, and review of objectives, policies, and methods”. RC functions do not extent to controlling the use of land to maintain terrestrial biodiversity. This is compared to explicit RC functions in respect of managing the use of land for aquatic ecosystem purposes (s30(1)(c)(iiia)).</p> <p>Accordingly, it is considered that this activity more appropriately aligns with specific TA functions under s 31(1)(b)(iii).</p>	<p>The assignment of jurisdiction does not appear to be entirely consistent with RC functions under RMA s 30, as the activity more appropriately aligns with TA functions under s 31. However, as the ED provides for joint jurisdiction the only implication relates to duplicated consent processes/compliance.</p> <p>As there is no change between the ID and the ED, this does not affect the conclusions of the Boffa Miskell effectiveness review.</p>
<b>General Provisions - Indigenous Bird Nesting</b>			
<p>Rule n1 (1) (ID) Rule 98 (1) and (2)</p>	<p>These rules were assigned jointly to both RC and TA under both the ID and the ED.</p>	<p>As for indigenous vegetation above, the assignment of jurisdiction of this function is questioned. While RMA s 30 and 31 assign functions to both RC and TA for maintaining indigenous biodiversity, RC functions are limited to the “establishment, implementation, and review of objectives, policies, and methods”. RC functions do not extent to controlling the use of land to maintain terrestrial biodiversity. This is compared to explicit RC functions in respect of managing the use of land for aquatic ecosystem purposes (s30(1)(c)(iiia)).</p> <p>Accordingly, it is considered that this activity more appropriately aligns with specific TA functions under s 31(1)(b)(iii).</p>	<p>The assignment of jurisdiction does not appear to be entirely consistent with RC functions under RMA s 30, as the activity more appropriately aligns with TA functions under s 31. However, as the ED provides for joint jurisdiction the only implication relates to duplicated consent processes/compliance.</p> <p>As there is no change between the ID and the ED, this does not affect the conclusions of the Boffa Miskell effectiveness review.</p>

<b>General Discretionary Activities (Fuel)</b>			
<p>Rule (1)(a) – Fuel (ID) Rule 101 (1) and (2) (ED)</p>	<p>This is a change in activity status from restricted discretionary activity to a discretionary activity. It relates to an infringement of permitted activity conditions relating to fuel use/storage.</p>	<p>It is considered that infringement of the relevant permitted activity condition can appropriately be managed by a restricted discretionary activity. However, the matters of discretion appear to be narrow and additional matters should be added to improve the robustness of the assessment, including:</p> <ul style="list-style-type: none"> <li>▪ Management and containment;</li> <li>▪ Spill response procedures.</li> </ul>	<p>In practice, it is unlikely that consent will be sought for this activity as the permitted activity requirements for fuel use are practicable and achievable. Should problems arise, for example spills, these are likely to be addressed by enforcement rather than obtaining a consent for future discharges or infringing land use requirement. Hence it is considered unlikely that the changes affect the conclusions of the Boffa Miskell effectiveness review.</p>

## 2.3 Summary of key issues

In summary the assessment of changes to, and jurisdiction of, the NES-PF has identified:

- 1) A key change between the Indicative Draft and Exposure Draft is the assignment of jurisdiction for most of the assessed Plantation Forestry activities to regional councils. One notable area of change in jurisdiction is the removal of territorial authority jurisdiction for consents in high/very high erosion prone areas. For example, under rules 24(1)/34(2) (earthworks), 50(2)/60(3) (forest quarrying), 62(2)/70(1) (harvesting) or 72(2)/74 (mechanical land preparation) of the Exposure Draft, resource consent is only required from the regional council compared to requiring consent from both regional councils and territorial authorities in the Indicative Draft.

In the development of the ESC, Bloomberg *et al* (2011)<sup>7</sup> defined erosion risk as being a function of: erosion susceptibility, the frequency of trigger events (such as high rainfall events) and downstream consequences. In our view, these factors align closely to regional council land use and discharge functions under RMA s 30(1)(c)(i) (soil conservation), s 30(1)(c)(iv) (natural hazards) and s 30(1)(f) (discharges of contaminants). We acknowledge that territorial authorities also have overlapping functions in respect of managing the effects of land use (RMA s 31(1)(b)) and specifically for the avoidance or mitigation of natural hazards (s 31(1)(b)(i)). However, there does not appear to be any effects or activities that are ‘lost’ by making resource consents in high/very high erosion prone areas the sole responsibility of regional councils. We also note that the Indicative Draft did not contain a default territorial authority rule for earthworks and mechanical land preparation, nor was there any differentiation between the functions of regional councils and territorial authorities for forest quarrying and harvesting in that the same matters of control/discretion applied to both – so it is not clear what aspects were expected to be covered by territorial authority consents for these activities.

If it is desirable for only one agency to have full responsibility for forestry earthworks, quarrying, harvesting and mechanical land preparation in high/very high erosion prone areas, then it is logical that jurisdiction sits with regional councils due to their relevant and specific functions under the RMA. In our view the key issue is ensuring that this responsibility is clear and, to assist in this, we have suggested some additional matters of discretion in Rule 34 in Table 1 above.

- 2) As indicated in Table 1 above, some individual permitted activity rules for which there was joint responsibility in the Indicative Draft have also been reassigned solely to regional councils in the Exposure Draft. In relation to these changes in jurisdiction:
  - a) For some changes, particularly in respect of regional council functions under RMA s 30 and s 13, 14 and 15 for the disturbance of the bed of a river or lake, diversion of water and discharges of sediment, the basis for the change to regional council jurisdiction is clear and appropriate and appear to be correcting errors in the Indicative Draft.
  - b) For other changes, for example in relation to engineering design, geotechnical and construction considerations and the composition of clean fill, responsibility does not clearly align with regional council functions under RMA s 30 and there are overlaps with territorial authority functions. However, for the rules where this was identified, it is considered that the relevant considerations are already part of regional councils’ considerations in respect of earthworks, quarries and other activities such that there is no material impact or ‘loss’ associated with assigning sole jurisdiction to regional councils. This could be further ensured by including additional matters of control/discretion to rules for controlled and discretionary activity resource consents.
  - c) Given that the majority of functions associated with forestry earthworks, mechanical land preparation, forestry quarrying and harvesting already lie with regional councils it seems logical that if it is desirable for one agency to have full responsibility for efficiency or other reasons, then jurisdiction for ‘grey’ areas is given to regional councils.

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<sup>7</sup> Bloomberg, M., Davies, T., Visser, R., Morgenroth, J. Erosion Susceptibility Classification and Analysis of Erosion Risks for Plantation Forestry. Report prepared for the Ministry for the Environment, May 2011.

- 3) There are two areas where it is considered questionable whether responsibility is appropriately assigned to regional councils – indigenous vegetation clearance/disturbance and indigenous bird nesting. While regional council functions under RMA s 30(1)(ga) are recognised<sup>8</sup> these do not appear to extend to the control of the use of land for the purposes of maintaining terrestrial biological diversity. Rather, it is considered that this function is more appropriately assigned to territorial authorities by virtue of their more specific functions for indigenous biological diversity under RMA s 31(1)(b)(iii)<sup>9</sup>. Notwithstanding this viewpoint, it is considered that assigning the responsibility for these rules jointly to regional councils (given their overlapping functions under RMA s30(1)(ga)) is unlikely to have a significant impact on the implementation of the NES-PF. Additionally, it does not change the conclusion of the Boffa Miskell effectiveness assessment (p 37) that the approach taken “ensures that no significant residual effects arise from activities that are permitted” as there is no change between the Indicative Draft and the Exposure Draft.
- 4) One change from the Indicative Draft to the Exposure Draft is the removal of setbacks from significant natural areas (SNA). It is understood that the basis for removing this setback is to correct an error in the Indicative Draft in that the setback from SNAs is applied to new afforestation only, thus removing the requirement for a setback during subsequent forestry activities. The effect of this change is unlikely to be significant as:
  - a) The setback applies to afforestation, thus protecting SNAs in new forest areas;
  - b) Some SNAs will be wetlands and are subject to setbacks under the rules;
  - c) SNAs are able to be subject to more stringent rules than those of the NES-PF (ED Rule 6(2)); and
  - d) Rules in respect of Ancillary Activities ensure that there is no more than incidental damage to indigenous vegetation in a SNA (Rule 90(2)(f)).

### 3 CONCLUSION

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In respect of the key deliverables sought by the Terms of Reference for this review, the conclusions below are made.

#### 3.1 Risks in achieving the ‘no significant adverse effects’ test

The Boffa Miskell assessment concluded (p 2) that the overall approach to the NES-PF (Indicative Draft):

*“...effectively ensures that the NES-PF limits the requirement for resource consent to the most severe end of the risk threshold and that no significant residual effects arise from activities that are permitted...”*

In our view the changes in jurisdiction and content that have occurred between the Indicative and Exposure Drafts has not altered this conclusion. However, we note that a significant assumption of the Boffa Miskell evaluation (p 22) was:

*“We have assessed the performance of regulatory controls on permitted activities with the assumption that forestry operators adhere to these controls, and that Councils assess compliance of forestry operators against these controls”.*

That is, the Boffa Miskell conclusion that there will be no significant adverse effects is predicated on an assumption of consistent compliance with all of the rules, controls and conditions.

It is appropriate to assume compliance. However, in our view, the greatest risk of significant adverse effects is where non-compliance with the ‘best practice’ controls and standards occurs. Non-compliance with erosion and sediment requirements, inappropriate methods of harvesting (particularly adjacent to streams and wetlands) and inappropriate management of slash etc can lead to significant sediment discharges or changes in hydrological flow that can significantly affect downstream water bodies, ecosystems and potentially communities. To effectively manage this

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<sup>8</sup> 30(1)(ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity

<sup>9</sup> 31(1)(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—(iii) the maintenance of indigenous biological diversity

risk requires the commitment of the forestry operators in undertaking the activity in accordance with the requirements of the NES-PF regulations and regional councils/territorial authorities in ensuring compliance.

### 3.2 Does the use of permitted activities meet the ‘no significant effects’ test

Specifically, the Terms of Reference sought advice on:

*“Whether the activities, with no activity specific conditions and no threshold for consent triggered by erosion susceptibility classification zoning, in relation to territorial authority functions, will result in any significant adverse effects on the environment i.e. not achieve the ‘no significant adverse effects’ test required under section 43A (3) (b) of the RMA”.*

In respect of this question, we concur with the Boffa Miskell statement (p33) that:

*“In summary, the NES-PF application of permitted activity status is not conservative, in that it limits the requirement for resource consent to the most severe end of the risk threshold.”*

In our view the application of permitted activities to all but the most severe erosion classes, without area or other scale thresholds, and applying smaller setbacks to perennial streams less than 3 metres in width, places the risk of significant adverse effects very much at the upper end of the ‘risk spectrum’. Large earthworks and other plantation forestry activities and steep slopes<sup>10</sup> maximises the risk of adverse effects, should non-compliance with best practice occur. Streams less than 3 metres in width are at greater risk of damage and no protection is applied to intermittent streams which, under the Auckland Unitary Plan, are given the same status as permanent streams.

However, we do not have the benefit of a detailed assessment of existing rules and controls to advise whether the thresholds at which the requirement for a resource consent is triggered are appropriate or not. Accordingly, we defer to the Boffa Miskell evaluation that the controls represent best practice and the approach effectively ensures that no significant residual effects arise from activities that are permitted – *provided the permitted activity rules and conditions are complied with.*

In our view, the change in jurisdiction for the rules to regional councils does not materially increase the risk of significant adverse effects for the following reasons:

- The most significant risk is associated with non-compliance with permitted activity rules and conditions, rather than the agency responsible for ensuring compliance;
- There was little change in jurisdiction for permitted activities from the Indicative Draft to the Exposure Draft – most were already assigned to regional councils;
- The majority of activities lie within the functions of regional councils under RMA s 30 and also regional consent requirements under s 13, s 14 and s 15 and are more appropriately assigned to regional councils if they are to be administered by one agency.

We reiterate that in our view ensuring compliance is critical for potential adverse effects to be effectively managed. The assignment of responsibilities for the four assessed Plantation Forestry activities almost solely to regional councils will reduce the ‘pool’ of officers available to assess compliance, unless this is otherwise resourced.

### 3.3 Does the change in jurisdiction impact the Boffa Miskell evaluation?

In our view, the changes in jurisdiction have little, if any, impact on the Boffa Miskell evaluation. Most of the permitted activities rules were assigned to regional councils in the Indicative Draft and the changes generally reflect the RMA functions of regional councils or are functions where there is a joint responsibility such that assigning sole jurisdiction to regional councils does not ‘lose’ any relevant controls.

One of the key changes is assigning the consenting function for earthworks, mechanical land preparation, forestry quarrying and harvesting in high/very high erosion prone land solely to regional councils. In the Indicative Draft,

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<sup>10</sup> Earthworks area and slope steepness are often factors that are used to determine thresholds between permitted activities and resource consents, and the activity class of consent, for regional council control of earthwork activities.

resource consents were required from both regional council and territorial authorities in these areas, although the Indicative Draft was silent as to what aspects were to be controlled by territorial authorities as there was no 'default' territorial authority consent rule. In our view, the issues/effects associated with the ESC (such as erosion, soil conservation and potentially natural hazards) align closely to regional council land use and discharge functions under RMA s 30 such that there does not appear to be any effects or activities that are 'lost' by making resource consents in high/very high erosion prone areas the sole responsibility of regional councils. In our view the key issue is ensuring that this responsibility is clear and, to assist in this, we have suggested some additional matters of discretion in Rule 34. Again, in our view this change does not affect the conclusions of the Boffa Miskell evaluation. We also note that this change relates to jurisdiction for resource consents and hence has no impact on the significance of adverse effects associated with permitted activities.

### **3.4 Is the split of functions in the NES-PF correct?**

In our view, the split of functions for the four Plantation Forestry activities that are the subject of the review are largely correct. We have identified some functions that are 'grey'. That is, where the responsibility is not entirely clear under the functions of councils under RMA s 30 and s 31. An example of this is engineering design, geotechnical and construction considerations associated with roads and fills. However, we consider that it is likely that most regional councils already consider such matters for these activities and the assignment of sole jurisdiction to regional councils is not a significant issue, provided these responsibilities are clear.

We have also identified two rules in the 'Ancillary Activities' and 'General Provisions' of the Exposure Draft (rules 90/91 – Indigenous vegetation clearance and disturbance, and rules 98/99 – Indigenous bird nesting), which we consider would be more appropriately assigned to territorial authorities given their more specific functions in respect of indigenous biological diversity under RMA s 31(1)(b)(iii). Notwithstanding this viewpoint, it is considered that assigning the responsibility for these rules jointly to regional councils (given their overlapping functions under RMA s30(1)(ga)) is unlikely to have a significant impact on the implementation of the NES-PF. Additionally, it does not change the conclusion of the Boffa Miskell effectiveness assessment that the approach taken "*ensures that no significant residual effects arise from activities that are permitted*" as there is no change between the Indicative Draft and the Exposure Draft.

**Appendix A:**

**Relevant Extracts from the RMA**

## Part 1

### Interpretation and application

#### 2 Interpretations

##### land—

- (a) includes land covered by water and the airspace above land; and
- (b) in a national environmental standard dealing with a regional council function under section 30 or a regional rule, does not include the bed of a lake or river; and
- (c) in a national environmental standard dealing with a territorial authority function under section 31 or a district rule, includes the surface of water in a lake or river

## Part 3

### Duties and restrictions under this Act

#### *River and lake beds*

#### 13 Restriction on certain uses of beds of lakes and rivers

- (1) No person may, in relation to the bed of any lake or river,—
- (a) use, erect, reconstruct, place, alter, extend, remove, or demolish any structure or part of any structure in, on, under, or over the bed; or
  - (b) excavate, drill, tunnel, or otherwise disturb the bed; or
  - (c) introduce or plant any plant or any part of any plant (whether exotic or indigenous) in, on, or under the bed; or
  - (d) deposit any substance in, on, or under the bed; or
  - (e) reclaim or drain the bed—

unless expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.

- (2) No person may do an activity described in subsection (2A) in a manner that contravenes a national environmental standard or a regional rule unless the activity—

- (a) is expressly allowed by a resource consent; or
- (b) is an activity allowed by section 20A.

- (2A) The activities are—

- (a) to enter onto or pass across the bed of a lake or river:
- (b) to damage, destroy, disturb, or remove a plant or a part of a plant, whether exotic or indigenous, in, on, or under the bed of a lake or river:
- (c) to damage, destroy, disturb, or remove the habitats of plants or parts of plants, whether exotic or indigenous, in, on, or under the bed of a lake or river:
- (d) to damage, destroy, disturb, or remove the habitats of animals in, on, or under the bed of a lake or river.

- (3) This section does not apply to any use of land in the coastal marine area.

- (4) Nothing in this section limits section 9.

#### *Water*

#### 14 Restrictions relating to water

(1) No person may take, use, dam, or divert any open coastal water, or take or use any heat or energy from any open coastal water, in a manner that contravenes a national environmental standard or a regional rule unless the activity—

- (a) is expressly allowed by a resource consent; or
- (b) is an activity allowed by section 20A.

(2) No person may take, use, dam, or divert any of the following, unless the taking, using, damming, or diverting is allowed by subsection (3):

- (a) water other than open coastal water; or
- (b) heat or energy from water other than open coastal water; or
- (c) heat or energy from the material surrounding geothermal water.

(3) A person is not prohibited by subsection (2) from taking, using, damming, or diverting any water, heat, or energy if—

- (a) the taking, using, damming, or diverting is expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent; or
- (b) in the case of fresh water, the water, heat, or energy is required to be taken or used for—
  - (i) an individual's reasonable domestic needs; or
  - (ii) the reasonable needs of a person's animals for drinking water,—
 and the taking or use does not, or is not likely to, have an adverse effect on the environment; or
- (c) in the case of geothermal water, the water, heat, or energy is taken or used in accordance with tikanga Maori for the communal benefit of the tangata whenua of the area and does not have an adverse effect on the environment; or
- (d) in the case of coastal water (other than open coastal water), the water, heat, or energy is required for an individual's reasonable domestic or recreational needs and the taking, use, or diversion does not, or is not likely to, have an adverse effect on the environment; or
- (e) the water is required to be taken or used for firefighting purposes.

### *Discharges*

#### **15 Discharge of contaminants into environment**

(1) No person may discharge any—

- (a) contaminant or water into water; or
- (b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or
- (c) contaminant from any industrial or trade premises into air; or
- (d) contaminant from any industrial or trade premises onto or into land—

unless the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.

(2) No person may discharge a contaminant into the air, or into or onto land, from a place or any other source, whether moveable or not, in a manner that contravenes a national environmental standard unless the discharge—

- (a) is expressly allowed by other regulations; or
- (b) is expressly allowed by a resource consent; or
- (c) is an activity allowed by section 20A.

(2A) No person may discharge a contaminant into the air, or into or onto land, from a place or any other source, whether moveable or not, in a manner that contravenes a regional rule unless the discharge—

- (a) is expressly allowed by a national environmental standard or other regulations; or
- (b) is expressly allowed by a resource consent; or
- (c) is an activity allowed by section 20A.

(3) This section shall not apply to anything to which section 15A or section 15B applies.

#### **Part 4**

#### **Functions, powers and duties of central and local government**

##### *Functions, powers and duties of local authorities*

#### **30 Functions of regional councils under this Act**

(1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:

- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
- (b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:
  - (ba) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to housing and business land to meet the expected demands of the region:
- (c) the control of the use of land for the purpose of—
  - (i) soil conservation:
  - (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:
  - (iii) the maintenance of the quantity of water in water bodies and coastal water:
  - (iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:
  - (iv) the avoidance or mitigation of natural hazards:
  - (v)[Repealed]
- (ca) the investigation of land for the purposes of identifying and monitoring contaminated land:
- (d) in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
  - (i) land and associated natural and physical resources:
  - (ii) the occupation of space in, and the extraction of sand, shingle, shell, or other natural material from, the coastal marine area, to the extent that it is within the common marine and coastal area:
  - (iii) the taking, use, damming, and diversion of water:
  - (iv) discharges of contaminants into or onto land, air, or water and discharges of water into water:
    - (iva) the dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:
  - (v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards:
  - (vi) the emission of noise and the mitigation of the effects of noise:
  - (vii) activities in relation to the surface of water:

(e) the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—

(i) the setting of any maximum or minimum levels or flows of water:

(ii) the control of the range, or rate of change, of levels or flows of water:

(iii) the control of the taking or use of geothermal energy:

(f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:

(fa) if appropriate, the establishment of rules in a regional plan to allocate any of the following:

(i) the taking or use of water (other than open coastal water):

(ii) the taking or use of heat or energy from water (other than open coastal water):

(iii) the taking or use of heat or energy from the material surrounding geothermal water:

(iv) the capacity of air or water to assimilate a discharge of a contaminant:

(fb) if appropriate, and in conjunction with the Minister of Conservation,—

(i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:

(ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:

(g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—

(i) soil conservation:

(ii) the maintenance and enhancement of the quality of water in that water body:

(iii) the maintenance of the quantity of water in that water body:

(iv) the avoidance or mitigation of natural hazards:

(ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:

(gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:

(h) any other functions specified in this Act.

(2) A regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), and (vii) to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996.

(3) However, a regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control aquaculture activities for the purpose of avoiding, remedying, or mitigating the effects of aquaculture activities on fishing and fisheries resources.

(4) A rule to allocate a natural resource established by a regional council in a plan under subsection (1)(fa) or (fb) may allocate the resource in any way, subject to the following:

(a) the rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent; and

(b) nothing in paragraph (a) affects section 68(7); and

(c) the rule may allocate the resource in anticipation of the expiry of existing consents; and

(d) in allocating the resource in anticipation of the expiry of existing consents, the rule may—

- (i) allocate all of the resource used for an activity to the same type of activity; or
- (ii) allocate some of the resource used for an activity to the same type of activity and the rest of the resource to any other type of activity or no type of activity; and
- (e) the rule may allocate the resource among competing types of activities; and
- (f) the rule may allocate water, or heat or energy from water, as long as the allocation does not affect the activities authorised by section 14(3)(b) to (e).

(5) In this section and section 31,—

**business land** means land that is zoned for business use in an urban environment, including, for example, land in the following zones:

- (a) business and business parks:
- (b) centres, to the extent that this zone allows business uses:
- (c) commercial:
- (d) industrial:
- (e) mixed use, to the extent that this zone allows business uses:
- (f) retail

**development capacity**, in relation to housing and business land in urban areas, means the capacity of land for urban development, based on—

- (a) the zoning, objectives, policies, rules, and overlays that apply to the land under the relevant proposed and operative regional policy statements, regional plans, and district plans; and
- (b) the capacity required to meet—
  - (i) the expected short and medium term requirements; and
  - (ii) the long term requirements; and
- (c) the provision of adequate development infrastructure to support the development of the land

**development infrastructure** means the network infrastructure for—

- (a) water supply, wastewater, and storm water; and
- (b) to the extent that it is controlled by local authorities, land transport as defined in section 5(1) of the Land Transport Management Act 2003.

### 31 Functions of territorial authorities under this Act

(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
  - (aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:
  - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—
    - (i) the avoidance or mitigation of natural hazards; and

(ii)[Repealed]

(iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:

(iii) the maintenance of indigenous biological diversity:

(c)[Repealed]

(d) the control of the emission of noise and the mitigation of the effects of noise:

(e) the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:

(f) any other functions specified in this Act.

**Appendix B:**

**Initial Assessment**

**Legend for Assessment Table**

	Identified in relevant NES (Indicative or Exposure Draft as relevant) as Regional Council and Territorial Authority jurisdiction
	Identified in relevant NES as Regional Council jurisdiction
	Identified in relevant NES as Territorial Authority jurisdiction
	Potentially material change in jurisdiction/effect

## Earthworks

Indicative NES	Exposure Draft NES	Assessment of Jurisdiction/Change
<b>Rules</b>		
<p><b>n1 – Permitted activities</b></p> <p><i>Earthworks</i></p> <p>(1) Earthworks is a permitted activity provided all the applicable conditions in n2 are complied with and it is in the -</p> <ul style="list-style-type: none"> <li>(a) Green or Yellow Zone, or</li> <li>(b) Orange Zone with a land slope of less than 25 degrees; or</li> <li>(c) Orange Zone with a land slope of 25 degrees or greater and comprises in any 3 month period - <ul style="list-style-type: none"> <li>(i) side cutting less than 3 metres deep over a contiguous length of 100 metres, and</li> <li>(ii) the deposition of less than 500m<sup>3</sup> of spoil.</li> </ul> </li> <li>(d) Red Zone and comprises in any 3 month period - <ul style="list-style-type: none"> <li>(i) side cutting less than 2 metres deep over a continuous length of 50 metres; and</li> <li>(ii) the deposition of less than 100 m<sup>3</sup> of spoil.</li> </ul> </li> </ul>	<p><b>23 Permitted activity: territorial authority</b></p> <p>Earthworks, including maintenance and upgrade of existing earthworks, and earthworks for forestry road widening and realignment, are a permitted activity if regulation 25(1) and (2) is complied with.</p> <p><b>24 Permitted activity: regional council</b></p> <p><i>Earthworks</i></p> <p>(1) Earthworks are a permitted activity if regulations 25 to 32 are complied with and the activity is in—</p> <ul style="list-style-type: none"> <li>(a) a green or yellow zone; or</li> <li>(b) an orange zone with a land slope of less than 25 degrees; or</li> <li>(c) an orange zone with a land slope of 25 degrees or greater and comprises in any 3-month period— <ul style="list-style-type: none"> <li>(i) side cutting less than 3 m deep over a contiguous length of no more than 100 m; and</li> <li>(ii) the deposition of less than 500 m<sup>3</sup> of spoil; or</li> </ul> </li> </ul>	<p>This is a key change, with TA involvement being limited to being notified of earthworks being undertaken, with no functions for any activities under the earthwork rules. Note however, that TA retain responsibility for some general functions, such as noise, that may apply to earthworks activities. It should also be noted that TAs had limited jurisdiction under the Indicative Draft.</p> <p>No material change in RC jurisdiction from Indicative to Exposure Drafts.</p>

	<p>(d) in a red zone and comprises in any 3-month period—</p> <p>(i) side cutting less than 2 m deep over a continuous length of no more than 50 m; and</p> <p>(ii) the deposition of less than 100 m<sup>3</sup> of spoil.</p>	
<p><i>Maintenance and upgrade of existing earthworks</i></p> <p>(2) Maintaining and upgrading existing earthworks, except forestry road widening and realignment is a permitted activity where the applicable conditions in n2 are complied with and the volume moved in any 3 month period is less than 5000m<sup>3</sup>.</p>	<p><i>24(2) Maintenance and upgrade of existing earthworks</i></p> <p>(2) Maintenance and upgrade of existing earthworks is a permitted activity in all erosion susceptibility classification zones if regulations 25 to 32 are complied with and the volume moved in any 3-month period is less than 5,000 m<sup>3</sup>.</p>	<p>Change to RC only. Discussed above.</p>
<p><i>Forestry road widening and realignment for safety purposes</i></p> <p>(3) Earthworks for forestry road widening or realignment for is a permitted activity where applicable conditions in n2 and the following conditions are complied with -</p> <p>(a) the volume moved in any 3 month period is less than 5000m<sup>3</sup>;</p> <p>(b) the forestry road upgrade must not be to an extent that it increases road carrying capacity or allows use by a heavier class of vehicle;</p> <p>(c) Benching and compaction techniques must be used in accordance with the New Zealand forest road engineering manual, section 4.6.2 (FOA, 2012 – “NZFOA Road Engineering Manual);</p>	<p><i>24 (3) Forestry road widening and realignment</i></p> <p>(3) Earthworks for forestry road widening or realignment are a permitted activity if regulations 25 to 32 and the following conditions are complied with:</p> <p>(a) the volume moved in any 3-month period is less than 5,000 m<sup>3</sup>;</p> <p>(b) the forestry road upgrade must not be to an extent that it increases road carrying capacity or allows use by a heavier class of vehicle;</p> <p>(c) cut and fill road construction is used that involves—</p> <p>(i) construction of a pilot track on the same grade as the road, but below the road formation height, to provide a bench below a forestry road to contain and stabilise the fill slope road and create a stable base:</p>	<p>Change to RC jurisdiction only.</p> <p>Possible jurisdiction issue - unclear what the basis is for clause 3(b) and possibly Clause 3(c) to be a RC function.</p> <ul style="list-style-type: none"> <li>▪ If 3(b) relates to effects on the road network etc then query whether it is a RC function or more appropriately a TA function.</li> <li>▪ May relate to engineering design, geotechnical or construction requirements for a road (as per 3(c)), but we would not normally expect these considerations to be RC function but rather a TA function. However, they are ancillary to main earthworks activity and therefore could be included.</li> </ul> <p>The conditions/controls are largely similar to that of the Indicative Draft. It is assumed that there is a technical</p>

<p>(d) a record of any forestry road widening or realignment must be maintained and be available for inspection by the relevant council;</p> <p>(e) Where activity site slopes are over 35 degrees, fill material must be end hauled, in accordance with the <i>New Zealand Forest Road Engineering Manual, section 4.6.3</i> (FOA, 2012 – “NZFOA road engineering manual”).</p>	<p>(ii) keying and compacting the fill to the bench:</p> <p>(d) a record of any forestry road widening or realignment must be maintained and be available for inspection by the relevant council:</p> <p>(e) where slopes are over 35 degrees, fill material is end— hauled to a safe containment area.</p>	<p>basis for the removal of reference to the forest road engineering manual.</p>
<p>(4) Any ancillary soil disturbance and discharges associated with these activities is permitted, including the –</p> <p>(a) disturbance of the bed of a river or lake; and</p> <p>(b) diversion of water; and</p> <p>(c) discharge of sediment or slash into water or onto land that may enter water.</p>	<p><b>93 Permitted activity: regional council</b></p> <p>(1) Any discharge of sediment or slash into water or onto land in circumstances that may result in it entering water, disturbance of the bed of the river or lake, or diversion of water associated with a plantation forestry activity is a permitted activity if subclause (2) and the following provisions are complied with:</p> <p>(a) for pruning and thinning to waste, regulations 19(2) and 20:</p> <p>(b) for earthworks, regulations 24 to 32:</p> <p>(c) for river crossings, regulations 36 to 45:</p> <p>(d) for forestry quarrying, regulations 50(2), 51, 53(3) and (4), 54, 55, 57, and 58:</p> <p>(e) for harvesting, regulations 62(2) and (3), 63, and 64 to 68:</p> <p>(f) for mechanical land preparation, regulations 72(2) and 73:</p> <p>(g) for slash traps, regulations 80(2) and 81 to 88.</p>	<p>There is no change in jurisdiction.</p> <p>Permitted are consistent with RC functions.</p> <p>There is no material change to the permitted activities between the Indicative Draft and Exposure Draft – although the Exposure Draft is more extensive as it has consolidated a number of rules into a single PA.</p>
<p><b>n2 - Permitted activity conditions</b> <i>Notifications</i></p>	<p><b>25 Permitted activity conditions: notice</b> <i>Territorial authority and regional council</i></p>	<p>No material change to notice requirements, other than separation of RC/TA function as discussed above.</p>

<p>(1) The relevant regional and district council must be notified of -</p> <p>(a) the place where the earthworks are to be done;</p> <p>(b) the dates on which it is intended that the earthworks begin and end.</p> <p>(2) Notification under n2(1) must occur –</p> <p>(a) at least 20 and no more than 60 working days prior to planned commencement of earthworks; or</p> <p>(b) annually in the case of ongoing earthworks.</p>	<p>(1) If earthworks involve more than 500m<sup>3</sup> of soil disturbance in any 3-month period, the relevant regional council and territorial authority must be provided with written notice of—</p> <p>(a) the place where earthworks or road widening and realignment are to be carried out; and</p> <p>(b) the dates on which the earthworks or road widening and realignment are planned to begin and end.</p> <p>(2) Notice under subclause (1) must occur—</p> <p>(a) at least 20 and no more than 60 working days before the date the earthworks or road widening and realignment are planned to begin; or</p> <p>(b) annually, in the case of ongoing earthworks.</p>	
<p><i>Sediment</i></p> <p>(3) Sediment originating from earthworks must be managed in such a way to ensure that after</p>	<p><i>Regional council</i></p> <p>(3) If a forestry earthworks management plan is required under regulation 26(2),—</p> <p>(a) notice under subclause (1) must include notice of whether a forestry earthworks management plan is required:</p> <p>(b) after a person gives notice under subclause (1), the council may request a copy of the forestry earthworks management plan and the person must provide a copy within 5 working days after the date by which the plan must be in place in accordance with regulation 26(3)(c).</p> <p><b>26 Permitted activity conditions: sediment and erosion</b></p> <p><i>Sediment</i></p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p>

<p>reasonable mixing it does not give rise to any of the following effects to receiving waters -</p> <ul style="list-style-type: none"> <li>(a) any conspicuous change in visual clarity;</li> <li>(b) the rendering of freshwater unsuitable for consumption by farm animals;</li> <li>(c) any significant adverse effect on aquatic habitats.</li> </ul>	<p>(1) 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:</p> <ul style="list-style-type: none"> <li>(a) any conspicuous change in colour or visual clarity;</li> <li>(b) the rendering of freshwater unsuitable for consumption by farm animals;</li> <li>(c) any significant adverse effect on aquatic habitats.</li> </ul>	<p>There is no material change to the conditions/controls between the Indicative and Exposure Drafts.</p>
<p><i>Erosion and Sediment Control Plan</i></p> <ul style="list-style-type: none"> <li>(4) An Erosion and Sediment Control Plan is required for all earthworks which involve the movement or removal of rock resulting in more than 500m<sup>2</sup> of soil disturbance in any 3 month period.</li> <li>(5) The Erosion and Sediment Control Plan must be made available to the council on request at least 20 working days before operations start.</li> <li>(6) The Erosion and Sediment Control Plan must include the following – <ul style="list-style-type: none"> <li>(a) a description of the nature, scale, timing and duration of forestry track, forestry roading and landing construction, earthworks and stabilisation;</li> <li>(b) the erosion and sediment control measures and the circumstances each type of measure will be used in, including - <ul style="list-style-type: none"> <li>(i) water run-off controls;</li> <li>(ii) methods to maintain stability of batters, cuts and side castings;</li> </ul> </li> </ul> </li> </ul>	<p><i>Forestry earthworks management plan</i></p> <ul style="list-style-type: none"> <li>(2) A forestry earthworks management plan is required for all earthworks that involve more than 500 m<sup>2</sup> of soil disturbance in any 3-month period.</li> <li>(3) A forestry earthworks management plan must— <ul style="list-style-type: none"> <li>(a) identify the environmental risks associated with the earthworks and provide operational responses to those risks that avoid, remedy, or mitigate the adverse effects of the activity on the environment; and</li> <li>(b) contain the details required by Schedule 3, but, if earthworks are to be undertaken without harvesting activities, there is no need to include the details required by clause 5 of that schedule or regulation 65; and</li> <li>(c) be in place at least 20 working days before the earthworks begin, except where the earthworks are required for a salvage operation.</li> </ul> </li> <li>(4) The forestry earthworks management plan must be provided to the relevant council on written request.</li> </ul>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is a range of changes to the conditions/controls between the Indicative and Exposure Drafts. It is assumed that these have been assessed and considered in light of Schedule 3.</p>

<ul style="list-style-type: none"> <li>(iii) measures to maintain slope stability;</li> <li>(iv) methods of sediment retention and control of sediment run-off;</li> <li>(v) measures to avoid effects on riparian margins, water bodies, coastal waters and the downstream receiving environment including the coastal marine area;</li> <li>(c) heavy rainfall response and contingency measures;</li> <li>(d) maintenance and monitoring procedures;</li> <li>(e) methods to monitor performance against the Erosion and Sediment Control Plan;</li> <li>(f) revegetation.</li> </ul> <p>(7) Material amendments to the Erosion and Sediment Control Plan must be documented, dated, and available to the relevant council on request. Material amendments are significant changes, such as the relocation of forestry roads or landings, or changes to proposed controls to manage environment effects.</p> <p>(8) Earthworks must be undertaken in accordance with the documented Erosion and Sediment Control Plan.</p>	<p>The council may request that the forestry earthworks management plan be provided annually.</p> <p>(5) Material amendments to the forestry earthworks management plan must be documented, dated, and made available to the relevant council on request. If a council has previously requested a copy of the plan, the council must be advised of and provided with any subsequent material amendments.</p> <p>(6) For the purpose of subclause (5), a <b>material amendment</b> is any significant change, such as the relocation of forestry roads or landings, or changes to the matters required by subclause (3)(a) that would significantly change the methods used to manage environment effects.</p> <p>(7) All earthworks must be carried out in accordance with the forestry earthworks management plan.</p>	
<p><i>Operation</i></p> <p>(9) Earthworks in the Orange Zones and Red Zones that are not required for further harvesting within 12 months must be stabilised to control run-off within 20 working days of their last use.</p> <p>(10) Soil disturbance in ephemeral flow paths must be managed to avoid obstruction or diversion of water flow.</p>	<p><b>27 Permitted activity conditions: operation</b></p> <p>(1) Earthworks in any orange zone or red zone that are not required for further harvesting within 12 months must be stabilised to control run-off within 20 working days of their last use.</p> <p>(2) Soil disturbance in ephemeral flow paths must be managed to avoid obstruction or diversion of water flow.</p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is no material change to the conditions/controls between the Indicative and Exposure Drafts.</p>

	<p>(3) In this regulation, ephemeral flow path means the route that water from intermittent rainfall events follows, if—</p> <ul style="list-style-type: none"> <li>(a) the flow path is an entrenched dry gully greater than 1 m deep; or</li> <li>(b) there is evidence of a channel within the valley system where overland flow occurs from time to time; or</li> <li>(c) there is evidence of erosion (such as gullying or headward gully erosion) associated with short-term water flow from time to time within the valley system; or</li> <li>(d) there is evidence of an active bed activated by rain events.</li> </ul>	
<p><i>Setbacks</i></p> <p>(11) Earthworks must not occur within 10 metres of -</p> <ul style="list-style-type: none"> <li>(a) a perennial river;</li> <li>(b) wetlands larger than 0.25 hectares;</li> <li>(c) lakes larger than 0.25 hectares;</li> <li>(d) an outstanding freshwater body;</li> <li>(e) surface water bodies subject to water conservation orders;</li> <li>(f) a significant natural area.</li> </ul> <p>(12) Earthworks must not occur within 30 metres of the coastal marine area.</p> <p>(13) The setbacks in n2(11) do not apply –</p> <ul style="list-style-type: none"> <li>(a) during the construction and maintenance of a water-body crossing, sediment or water control</li> </ul>	<p><b>28 Permitted activity conditions: setbacks</b></p> <p>(1) Earthworks must not occur within 10 m of—</p> <ul style="list-style-type: none"> <li>(a) a perennial river; or</li> <li>(b) wetlands larger than 0.25 ha; or</li> <li>(c) lakes larger than 0.25 ha; or</li> <li>(d) an outstanding freshwater body; or</li> <li>(e) surface water bodies subject to water conservation orders.</li> </ul> <p>(2) Earthworks must not occur within 30 m of the coastal marine area.</p> <p>(3) The setbacks in subclause (1) do not apply—</p> <ul style="list-style-type: none"> <li>(a) during the construction and maintenance of a river crossing, a sediment or water control measure, or a slash trap or debris retention structure; or</li> </ul>	<p>There is no change in jurisdiction. Controls/conditions are consistent with RC functions.</p> <p>There is no material change to the conditions/controls between the Indicative and Exposure Drafts, with the exception of removing the setback from significant natural areas.</p>

<p>measure, or a slash trap or debris retention structure; or</p> <p>(b) where the earthworks within the setback area will result in less than 100 m<sup>2</sup> of soil disturbance in any 3 month period; and is not closer than 5 metres to the waterbody or feature;</p> <p>(c) during the maintenance of existing earthworks.</p>	<p>(b) where the earthworks within the setback area will result in less than 100 m<sup>2</sup> of soil disturbance in any 3-month period, and are not within 5 m of the water body or feature; or</p> <p>(c) during the maintenance of existing earthworks.</p>	
<p><i>Fill</i></p> <p>(14) Fill material must contain no more than 5% (by volume) of vegetation and wood.</p>	<p><b>29 Permitted activity conditions: fill and spoil</b></p> <p><i>Fill</i></p> <p>(1) Fill material must contain no more than 5% (by volume) of vegetation and wood.</p>	<p>Change in jurisdiction from TA &amp; RC to RC only.</p> <p>Cleanfill requirements are often duplicated across both RCs and TAs and it is common for a fill requirement that specifies the maximum vegetation content (although see note below).</p> <p>Given that there is overlap, and the primary issues relate to sediment discharge, RC jurisdiction is considered appropriate and controls/conditions are within RC functions. However, to ensure the matter is fully addressed, it is considered that additional considerations should be added to Rule 34 (3) to ensure effects are appropriately managed.</p>
<p><i>Spoil</i></p> <p>(15) Spoil must not be deposited in the following locations -</p> <p>(a) where it may cause failure of the deposited material or the underlying land;</p> <p>(b) over logging slash or woody vegetation;</p> <p>(c) a water body, coastal water or significant natural area;</p> <p>(d) in a position where it can readily enter, or deliver sediment into a water body, or the</p>	<p><i>Spoil</i></p> <p>(2) Spoil must not be deposited in the following locations:</p> <p>(a) where it may cause failure of the deposited material or the underlying land;</p> <p>(b) over logging slash or woody vegetation:</p> <p>(c) in a water body, coastal water, or significant natural area;</p> <p>(d) in a position where it can readily enter, or deliver sediment into, a water body or the</p>	<p>Change in jurisdiction from TA &amp; RC to RC only.</p> <p>Controls relating to sediment discharge (c &amp; d) are within RC functions. Issues relating to engineering design, geotechnical and construction matters (a &amp; b) are less clear and typically fall within TA functions.</p> <p>Overall, it is considered that RC-only jurisdiction is ok, but additional RD matters of discretion are recommended to ensure issues are fully covered.</p>

downstream receiving environment including the coastal environment.	downstream receiving environment, including the coastal environment.	
<p><i>Sediment and stormwater control measures</i></p> <p>(16) All disturbed soil must be stabilised or contained to minimise the movement of sediment into any water body or coastal water resulting in -</p> <ul style="list-style-type: none"> <li>(a) the diversion or damming of any waterbody; or</li> <li>(b) damage to downstream infrastructure, property or receiving environments including the costal environment.</li> </ul> <p>(17) Stormwater and sediment control measures must be installed and maintained.</p> <p>(18) Water run-off controls must be installed and maintained for all forestry roads, forestry tracks, landings and fire breaks.</p> <p>(19) Batter, cuts and side castings construction must use methods that maintain stability.</p> <p>(20) The minimum water table culvert internal diameters for forestry roading and earthworks are -</p> <ul style="list-style-type: none"> <li>(a) 325mm internal diameter in Green and Yellow Zones and Orange Zones with a land slope less than 25 degrees;</li> <li>(b) 400mm internal diameter in the Orange Zone with a land slope at least 25 degrees, and Red Zone.</li> </ul>	<p><b>30 Permitted activity conditions: sediment and stormwater control measures</b></p> <p>(1) All disturbed soil must be stabilised or contained to minimise the movement of sediment into any water body or coastal water resulting in—</p> <ul style="list-style-type: none"> <li>(a) the diversion or damming of any water body; or</li> <li>(b) damage to downstream infrastructure, property, or receiving environments including the costal environment.</li> </ul> <p>(2) Stormwater and sediment control measures must be installed and maintained.</p> <p>(3) Water run-off controls must be installed and maintained for all forestry roads, forestry tracks, landings, and fire breaks.</p> <p>(4) Batters, cuts, and side cast construction must use methods that maintain stability.</p> <p>(5) The minimum water table culvert internal diameters for any forestry road or forestry track and earthworks are—</p> <ul style="list-style-type: none"> <li>(a) 325 mm internal diameter in any green, yellow, or orange zone with a land slope of less than 25 degrees;</li> <li>(b) 400 mm internal diameter in any orange zone with a land slope of more than 25 degrees or in any red zone.</li> </ul>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is no material change to the conditions/controls between the Indicative and Exposure Drafts.</p>
<p><i>Stabilisation and containment</i></p> <p>(21) As soon as practicable, or the sooner of the autumn or the spring following the completion of the activity,</p>	<p><b>31 Permitted activity conditions: stabilisation and containment</b></p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p>

<p>exposed areas of soil, except firebreaks, that have the potential to discharge sediment to water must be stabilised. Suitable measures include -</p> <ul style="list-style-type: none"> <li>(a) seeding;</li> <li>(b) vegetative cover, mulch or slash cover;</li> <li>(c) compacting, draining, roughening, or armouring;</li> <li>(d) containing in sediment traps.</li> </ul>	<ul style="list-style-type: none"> <li>(1) As soon as practicable, but no later than the autumn or the spring following the completion of the activity, exposed areas of soil, except firebreaks, that have the potential to discharge sediment to water must be stabilised.</li> <li>(2) Suitable measures include— <ul style="list-style-type: none"> <li>(a) seeding;</li> <li>(b) vegetative cover, mulch, or slash cover;</li> <li>(c) compacting, draining, roughening, or armouring by the placement of rock or the use of other rigid materials;</li> <li>(d) containing in sediment traps.</li> </ul> </li> </ul>	<p>There is no material change to the conditions/controls between the Indicative and Exposure Drafts.</p>
<p><i>Design</i></p> <p>(22) Forestry roads, forestry tracks, and landings must be managed and aligned to -</p> <ul style="list-style-type: none"> <li>(a) divert water run-off and disperse water flows to stable ground and constructed fill; and</li> <li>(b) minimise disturbance to earthflows and gullies.</li> </ul>	<p><b>32 Permitted activity conditions: roads, tracks, and landings</b></p> <ul style="list-style-type: none"> <li>(1) Forestry roads, forestry tracks, and landings must be managed and aligned to— <ul style="list-style-type: none"> <li>(a) divert water run-off and disperse water flows to stable ground and away from constructed fill; and</li> <li>(b) minimise disturbance to earthflows and gullies.</li> </ul> </li> <li>(2) In this regulation, <b>earthflow</b> means rapid flowing of soil and underlying weathered material on slopes of between 10 and 20 degrees, where— <ul style="list-style-type: none"> <li>(a) it is characterised by an overthrust bulging dome at the toe, a depressed, fissured, and disrupted centre upslope, and slipping or slumping at the head; and</li> <li>(b) transverse cracks are prominent, particularly in the upper region of the movement.</li> </ul> </li> </ul>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is no material change to the conditions/controls between the Indicative and Exposure Drafts.</p>

	<p><b>33 Controlled activity</b></p> <p><i>Territorial authority and regional council</i></p> <p>(1) Earthworks are a controlled activity if regulation 25 is not complied with.</p> <p>(2) Control is reserved over the timing and duration of the activity.</p>	<p>It is not clear what criteria will be used for assessing timing and duration for a TA controlled activity – as TA has no management functions associated with earthworks.</p>
<p><b>n3 – Restricted discretionary activities</b></p> <p>(1) Earthworks is a restricted discretionary activity where any of the applicable conditions in n2 are not complied with.</p> <p>(2) Earthworks is a restricted discretionary activity in -</p> <p>(a) Orange Zone with a land slope at least 25 degrees where the threshold specified in n1(1)(c) is exceeded; and</p> <p>(b) Red Zones where the threshold specified in n1(1)(d) is exceeded; and</p> <p>(c) Where the land area is undefined in the Erosion Susceptibility Classification.</p>	<p><b>34 Restricted discretionary activity: regional council</b></p> <p>(1) Earthworks are a restricted discretionary activity if any of regulations 26 to 32 is not complied with.</p> <p>(2) Earthworks are a restricted discretionary activity in—</p> <p>(a) any orange zone with a land slope of 25 degrees or more where the threshold specified in regulation 24(1)(c) is exceeded; and</p> <p>(b) any red zone where the threshold specified in regulation 24(1)(d) is exceeded; and</p> <p>(c) any area where the land is undefined in the erosion susceptibility classification.</p>	<p>No change in jurisdiction or activity status.</p> <p>RC jurisdiction is appropriate. However, there does not appear to be a default where rules 24(2) and 24(3) are not complied with.</p>
<p><i>Matters to which discretion is restricted</i></p> <p>(3) Discretion is restricted to the following matters -</p> <p>(a) timing, location and duration of works;</p> <p>(b) ecological and aquatic effects;</p> <p>(c) method of stabilising soil disturbance;</p> <p>(d) method of sediment retention and run-off;</p> <p>(e) stormwater control measures;</p> <p>(f) method of minimising erosion;</p>	<p>(3) Discretion is restricted to—</p> <p>(a) the timing, location, and duration of works:</p> <p>(b) the effects on ecosystems, freshwater, and the coastal environment:</p> <p>(c) the effects on vegetation in the riparian zone:</p> <p>(d) the method of stabilising soil disturbance:</p> <p>(e) the method of sediment retention and run-off management:</p> <p>(f) stormwater control measures:</p>	<p>No change in jurisdiction.</p> <p>Activities within RC functions. However, given the PAs highlighted above where the jurisdiction overlaps with TA, this list appears deficient in respect of ensuring that there is adequate coverage of the issues, notably:</p> <ul style="list-style-type: none"> <li>Road width and change in capacity/vehicle class – eg what is the purpose of this requirement? If it relates to engineering, geotechnical or construction</li> </ul>

<p>(g) placement and management of cuts and fill likely to cause slope instability.</p>	<p>(g) the methods to minimise erosion: (h) the placement and management of cuts and fill likely to cause slope instability.</p>	<p>requirements to ensure roads etc are engineered to a suitable standard for the vehicles being used, then this needs to be added.</p> <ul style="list-style-type: none"> <li>▪ Composition of fill (in relation to vegetation and other material) – see above re vegetative material.</li> <li>▪ Other engineering/geotechnical matters relating to fill, placement of spoil etc.</li> </ul>
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## Mechanical Land Preparation

Indicative NES	Exposure Draft NES	
<b>Rules</b>		
<p><b>n1 – Permitted activities</b></p> <p>(1) Mechanical land preparation in the following areas is a permitted activity if all of the applicable conditions in n2 are complied with –</p> <ul style="list-style-type: none"> <li>(a) Green and Yellow Zones;</li> <li>(b) Orange and Red Zones where the land slope is less than 25 degrees;</li> <li>(c) Orange and Red Zones where the land slope is 25 degrees or more, provided the subsoil is not affected;</li> <li>(d) Orange and Red Zones where the land slope is 25 degrees or more, where the subsoil is affected but the area covered by the mechanical land preparation activity involves no more than 2 hectares or 10% of the mechanical land preparation activity, whichever is the lesser.</li> </ul>	<p><b>72 Permitted activity</b></p> <p><i>Territorial authority</i></p> <p>(1) Mechanical land preparation is a permitted activity.</p> <p><i>Regional council</i></p> <p>(2) Mechanical land preparation in the following areas is a permitted activity if regulation 73 is complied with:</p> <ul style="list-style-type: none"> <li>(a) a green or yellow zone; or</li> <li>(b) an orange or a red zone where the land slope is less than 25 degrees; or</li> <li>(c) an orange or a red zone where the land slope is 25 degrees or more, if the subsoil is not affected; or</li> <li>(d) an orange or a red zone where the land slope is 25 degrees or more, and where the subsoil is affected, but the area covered by the mechanical land preparation activity is 2 ha or less.</li> </ul>	<p>As for earthworks above, this is a key change in jurisdiction that assigns all responsibilities for mechanical land preparation to RCs. However, it is noted that the jurisdiction was largely assigned to RCs under the Indicative Draft. This is considered appropriate and individual conditions/controls are discussed below.</p>
<p>(2) Any ancillary soil disturbance and discharges associated with these activities is permitted, including the –</p> <ul style="list-style-type: none"> <li>(a) disturbance of the bed of a river or lake; and</li> </ul>	<p><b>93 Permitted activity: regional council</b></p> <p>(as for earthworks above)</p>	<p>There is a change in jurisdiction from TA/RC to RC only. This is appropriate as the activities are within RC functions.</p>

<p>(b) diversion of water; and (c) discharge of sediment or slash into water or onto land that may enter water.</p>		<p>Note that the identification of jurisdiction in the Indicative Draft is inconsistent with that of earthworks above for the same activity.</p>
<p><b>n2 – Permitted activity conditions</b> <i>Methods</i></p> <p>(1) Mechanical land preparation must be done parallel to the contour of the land, except for roller crushing and downhill ripping or if it is unsafe or impracticable.</p> <p>(2) If mechanical land preparation is not done parallel to the contour of the land sediment control measures must be used to minimise sediment discharges to waterways.</p> <p>(3) Continuous downhill ripping of soil must be less than 50 metres.</p> <p>(4) Downhill ripping is not permitted at sites with a gully or tunnel gully erosion risk of moderate or greater.</p> <p>(5) Exposed areas of soil that have the potential to discharge sediment to water must be stabilised as soon as practicable, or the sooner of the autumn or the spring following the completion of the mechanical land preparation.</p>	<p><b>73 Permitted activity conditions: methods, sediment, and setbacks</b> <i>Methods</i></p> <p>(1) Mechanical land preparation must be carried out parallel to the contour of the land, except for roller crushing and downhill ripping or if working parallel is unsafe or impracticable.</p> <p>(2) If mechanical land preparation is not carried out parallel to the contour of the land, sediment control measures must be used to minimise sediment discharges to surface water bodies.</p> <p>(3) Continuous downhill ripping of soil must be less than 50 m and sufficient distance must be maintained between ripping so that entrained water from each ripping furrow does not reach another ripping furrow.</p> <p>(4) Downhill ripping is not permitted on land with a gully or tunnel gully erosion risk identified in the NZLRI extended legend as severe or greater.</p> <p>(5) Exposed areas of soil that have the potential to discharge sediment into water must be stabilised as soon as practicable, or the sooner of the autumn or spring that next follows the completion of the mechanical land preparation.</p>	<p>There is no change in jurisdiction. Controls/conditions are consistent with RC functions. There is no material change to the controls between the Indicative and Exposure Drafts.</p>
<p><i>Sediment</i></p> <p>(6) Sediment originating from mechanical land preparation must be managed in such a way to ensure that after reasonable mixing it does not give</p>	<p><i>Sediment</i></p> <p>(6) Sediment originating from mechanical land preparation must be managed to ensure that after</p>	<p>There is no change in jurisdiction. Controls/conditions are consistent with RC functions.</p>

<p>rise to any of the following effects to receiving waters -</p> <ul style="list-style-type: none"> <li>(a) any conspicuous change in visual clarity;</li> <li>(b) the rendering of freshwater unsuitable for consumption by farm animals;</li> <li>(c) any significant adverse effect on aquatic habitats.</li> </ul> <p>(7) All disturbed soil must be stabilised or contained to minimise the movement of sediment into any waterbody or coastal water resulting in –</p> <ul style="list-style-type: none"> <li>(a) the diversion or damming of any water body; or</li> <li>(b) damage to downstream infrastructure, property or receiving environments including the coastal environment.</li> </ul>	<p>reasonable mixing it does not give rise to any of the following effects in the receiving waters:</p> <ul style="list-style-type: none"> <li>(a) any conspicuous change in colour or visual clarity;</li> <li>(b) rendering freshwater unsuitable for consumption by farm animals;</li> <li>(c) any significant adverse effect on aquatic habitats.</li> </ul> <p>(7) All disturbed soil must be stabilised or contained to minimise the movement of sediment into any water body or coastal water resulting in—</p> <ul style="list-style-type: none"> <li>(a) the diversion or damming of any water body; or</li> <li>(b) damage to downstream infrastructure, property, or receiving environments, including the coastal environment.</li> </ul>	<p>There is no material change to the controls between the Indicative and Exposure Drafts.</p>
<p><i>Setbacks</i></p> <p>(8) Mechanical land preparation must not occur-</p> <ul style="list-style-type: none"> <li>(a) Within 5 metres of a perennial river with a bank full channel width less than 3 metres;</li> <li>(b) Within 10 metres of- <ul style="list-style-type: none"> <li>(i) a perennial river with a bank full channel width of 3 metres or more;</li> <li>(ii) a wetland larger than 0.25 hectares;</li> <li>(iii) a lake larger than 0.25 hectares;</li> <li>(iv) an outstanding freshwater body or surface water body subject to a water conservation order;</li> <li>(v) a significant natural area.</li> </ul> </li> <li>(c) Within 30 metres of the coastal marine area.</li> </ul>	<p><i>Setbacks</i></p> <p>(8) Mechanical land preparation must not occur—</p> <ul style="list-style-type: none"> <li>(a) within 5 m of a perennial river with a bankfull channel width less than 3 m; or</li> <li>(b) within 10 m of— <ul style="list-style-type: none"> <li>(i) a perennial river with a bankfull channel width of 3 m or more;</li> <li>(ii) a wetland larger than 0.25 ha; or</li> <li>(iii) a lake larger than 0.25 ha; or</li> <li>(iv) an outstanding freshwater body, or a surface water body subject to a water conservation order; or</li> </ul> </li> <li>(c) within 30 m of the coastal marine area.</li> </ul>	<p>There is no change in jurisdiction. Controls/conditions are consistent with RC functions.</p> <p>The only change from the Indicative Draft is the removal of the setback from a significant natural area. The basis for removing this requirement is unknown and the extent of potential effects cannot be assessed.</p>

	<p>(9) In this regulation,—</p> <p><b>ripping</b> means disturbing the subsoil to a depth of 30 to 90 cm with a single or double tine (or winged) ripper mounted on an agricultural tractor or bulldozer</p> <p><b>roller crushing</b> means crushing and breaking up vegetation using a large heavy roller released down a slope or towed by a bulldozer or tractor.</p>	
<p><b>n3 – Restricted discretionary activities</b></p> <p>(1) Mechanical land preparation is a restricted discretionary activity if an applicable condition in n2 is not complied with.</p> <p>(2) Mechanical land preparation is a restricted discretionary activity in Red Zones with a land slope of 25 degrees or more if the subsoil is affected, and the area covered by the mechanical land preparation activity involves more than 2 hectares or 10% of the mechanical land preparation activity.</p> <p>(3) Mechanical land preparation is a restricted discretionary activity where the land area is undefined in the Erosion Susceptibility Classification.</p>	<p><b>74 Restricted discretionary activity: regional council</b></p> <p><i>Restricted discretionary activity</i></p> <p>(1) Mechanical land preparation is a restricted discretionary activity if regulation 73 is not complied with.</p> <p>(2) Mechanical land preparation is a restricted discretionary activity in an orange or a red zone with a land slope of 25 degrees or more if the subsoil is affected, and the area covered by the mechanical land preparation activity is more than 2 ha.</p> <p>(3) Mechanical land preparation is a restricted discretionary activity if the land is undefined in the erosion susceptibility classification.</p>	<p>There is no change in jurisdiction.</p> <p>There is no material change to the activity status between the Indicative and Exposure Drafts.</p>
<p><i>Matters to which discretion is restricted</i></p> <p>(4) Discretion is restricted to the following matters -</p> <p>(a) Timing, location and duration of works;</p> <p>(b) Ecological and aquatic effects;</p> <p>(c) Method of stabilising soil disturbance;</p> <p>(d) Methods of minimising erosion;</p> <p>(e) Methods of sediment retention and run off management.</p>	<p><i>Matters to which discretion is restricted</i></p> <p>(4) Discretion is restricted to—</p> <p>(a) the timing, location, area, volume, and duration of works;</p> <p>(b) the effects on ecosystems, freshwater, and the coastal environment;</p> <p>(c) the effects on vegetation in the riparian zone;</p> <p>(d) the method of stabilising soil disturbance;</p> <p>(e) the methods to minimise erosion:</p>	<p>There is no change in jurisdiction.</p> <p>There is no material change to the matters of discretion between the Indicative and Exposure Drafts.</p>

<p>(5) If the activity occurs in Orange Red Zones with a land slope is greater than 25 degrees and the technique used affects the subsoil, additional discretion is applied to -</p> <ul style="list-style-type: none"> <li>(a) the type of mechanical land preparation and method used; and</li> <li>(b) changes to hydrological flow.</li> </ul>	<ul style="list-style-type: none"> <li>(f) the methods of sediment retention and run-off management.</li> </ul> <p>(5) If the activity occurs in the orange or red zones with a land slope of more than 25 degrees and the technique used affects the subsoil, discretion is restricted to the matters in subclause (4) and—</p> <ul style="list-style-type: none"> <li>(a) the type of mechanical land preparation and method used; and</li> <li>(b) the effects on hydrological flow.</li> </ul>	
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## Forestry Quarrying

Indicative NES	Exposure Draft NES	
<p><b>n1 – Permitted activities</b></p> <p>(1) Forestry Quarrying is a permitted activity in Green and Yellow Zones, and Orange Zones, except earthflow terrain, provided that the applicable conditions in n2 are complied with.</p>	<p><b>50 Permitted activity</b></p> <p><i>Territorial authority</i></p> <p>(1) Forestry quarrying is a permitted activity if regulations 51(1) and (2), 52, 53(1) and (2), and 56 are complied with.</p> <p><i>Regional council</i></p> <p>(2) Forestry quarrying is a permitted activity in any green or yellow zone, or in any orange zone except in earthflow terrain, if regulations 51, 53(3) and (4), 54, 55, 57, and 58 are complied with.</p>	<p>The key change to these provisions is a greater distinction between RC and TA functions. These are considered in respect of the various rules and associated conditions below.</p>
<p>(2) Any ancillary soil disturbance and discharges associated with these activities is permitted, including the –</p> <p>(a) disturbance of the bed of a river or lake; and</p> <p>(b) diversion of water; and</p> <p>(c) discharge of sediment or slash into water or onto land that may enter water.</p>	<p><b>93 Permitted activity: regional council</b></p> <p>(as for earthworks above)</p>	<p>There is a change in jurisdiction from TA/RC to RC only. This is appropriate as the activities are within RC functions.</p> <p>Note that the identification of jurisdiction in the Indicative Draft is inconsistent with that of earthworks above for the same activity.</p>

<p><b>n2 – Permitted activity conditions</b></p> <p><i>Notification</i></p> <p>(1) The relevant regional and district council must be notified of -</p> <p>(a) the place where the forestry quarrying is to be done; and</p> <p>(b) the dates on which it is intended that the forestry quarrying begin and end.</p> <p>(2) Notification under n2(1) must occur -</p> <p>(a) at least 20 and no more than 60 working days prior to planned commencement of forestry quarrying; or</p> <p>(b) annually in the case of ongoing forestry quarrying.</p>	<p><b>51 Permitted activity conditions: notice</b></p> <p><i>Territorial authority and regional council</i></p> <p>(1) If forest quarrying exceeds 200m<sup>3</sup> in volume, the relevant regional council and territorial authority must be provided with written notice of—</p> <p>(a) the place where the forestry quarrying is to be carried out; and</p> <p>(b) the dates the forestry quarrying is planned to begin and end.</p> <p>(2) Notice under subclause (1) must occur—</p> <p>(a) at least 20 and no more than 60 working days before date the forestry quarrying is planned to begin; or</p> <p>(b) annually, in the case of ongoing forestry quarrying.</p>	<p>This condition requires notification of RC/TA.</p>
<p><i>Regional council</i></p> <p>(3) If a quarry erosion and sediment management plan is required under regulation 58(1),—</p> <p>(a) the written notice in subclause (1) must include notice of whether a forestry earthworks management plan is required:</p> <p>(b) after a person gives notice under subclause (1), the council may request a copy of the quarry erosion and sediment management plan and the person must provide a copy within 5 working days after the date by which the plan must be in place in accordance with regulation 58(3).</p>		
<p><i>Visibility</i></p>	<p><b>52 Permitted activity conditions: visibility</b></p>	<p>There is no change in jurisdiction.</p>

<p>(3) For quarries within 2km of an existing dwelling on an adjoining property under different ownership that are visible from the adjoining property, the following conditions must be complied with -</p> <p>(a) no more than 5000 m<sup>3</sup> of material must be quarried per five-year period per working area (as defined in condition (b));</p> <p>(b) the working area must be restricted to no more than 1 quarry site, no greater than 200m<sup>3</sup> in volume operating within any 10 hectare area.</p>	<p>If a quarry is within 2 km of a dwelling on an adjoining property under different ownership or management, and is visible from the adjoining property,—</p> <p>(a) no more than 5 000 m<sup>3</sup> of material must be quarried per 5-year period per working area (as defined in paragraph (b));</p> <p>(b) the working area must be restricted to no more than 1 quarry site, no greater than 200 m<sup>3</sup> in volume, operating within any 10-hectare area.</p>	<p>These controls/conditions are consistent with the functions of a TA (s31(1)(b)).</p> <p>There is no material change to the controls between the Indicative and Exposure Drafts.</p>
<p><i>Property setbacks</i></p> <p>(4) A new quarrying activity must not be undertaken closer than 500 metres from an existing dwelling under different ownership, or to a dwelling that is not yet constructed but for which a resource consent exists.</p> <p>(5) Excavated soil or overburden must not be deposited within 20 metres of an adjoining property under different ownership.</p>	<p><b>53 Permitted activity conditions: setbacks</b></p> <p><i>Territorial authority</i></p> <p>(1) New forestry quarrying must not be undertaken within 500 m of—</p> <p>(a) a dwelling under different ownership or management than the land on which the forest quarry is located; or</p> <p>(b) the boundary of land zoned in a district plan for urban, residential, industrial, or commercial use.</p> <p>(2) Excavated soil or overburden must not be deposited within 20 m of an adjoining property under different ownership or management.</p>	<p>There is no change in jurisdiction.</p> <p>Rule/controls consistent with TA functions.</p> <p>There is no material change to the controls between the Indicative and Exposure Drafts.</p>
<p><i>Regional setbacks</i></p> <p>(6) Quarrying must not be undertaken within 20 metres of the following -</p> <p>(a) a perennial river;</p> <p>(b) a wetland larger than 0.25 hectares;</p> <p>(c) a lake larger than 0.25 hectares;</p> <p>(d) a significant natural area.</p>	<p><i>Regional council</i></p> <p>(3) Forestry quarrying must not be undertaken within 20 m of—</p> <p>(a) a perennial river; or</p> <p>(b) a wetland larger than 0.25 ha; or</p> <p>(c) a lake larger than 0.25 ha.</p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is a change to the controls such that there is no buffer area adjacent to a significant natural area. The basis for this is not known and the extent of potential effects cannot be assessed.</p>

<p>(7) Quarrying must not be undertaken within 30 metres of the coastal marine area.</p>	<p>(4) Forestry quarrying must not be undertaken within 30 m of the coastal marine area.</p>	
<p><i>Fill or spoil</i></p> <p>(8) Excavated soil and overburden must not be deposited in the following locations –</p> <ul style="list-style-type: none"> <li>(a) where it may cause failure of the deposited material or the underlying land;</li> <li>(b) over logging slash or woody vegetation;</li> <li>(c) a water body, coastal water or significant natural area;</li> <li>(d) a position where it can readily enter, or deliver sediment into a water body, or the downstream receiving environment including the coastal environment.</li> </ul> <p>(9) Overburden and exposed soil generated from quarrying activities must be stabilised to prevent soil erosion and sediment export within six months of exposure.</p>	<p><b>54 Permitted activity conditions: fill or spoil</b></p> <p>(1) Excavated soil and overburden must not be deposited in the following locations:</p> <ul style="list-style-type: none"> <li>(a) where it may cause failure of the deposited material or the underlying land:</li> <li>(b) over logging slash or woody vegetation:</li> <li>(c) a water body, coastal water, or significant natural area:</li> <li>(d) in a position where it can readily enter, or deliver sediment into, a water body or the downstream receiving environment, including the coastal environment.</li> </ul> <p>(2) Overburden and exposed soil generated from quarrying activities must be stabilised to prevent soil erosion and sediment export within 6 months of exposure.</p> <p>(3) All topsoil stripped from the surface of the land to a maximum depth of 25 cm from the working area of a quarry must be retained on the property for future restoration of the land.</p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is no material change to the controls between the Indicative and Exposure Drafts. Clause (3) has been added to rule 54 (from rule 17 in the Indicative Draft)</p>
<p><i>Sediment</i></p> <p>(10) Sediment originating from forestry quarrying must be managed in such a way to ensure that after reasonable mixing it does not give rise to any of the following effects to receiving waters -</p> <ul style="list-style-type: none"> <li>(a) any conspicuous change in visual clarity;</li> <li>(b) the rendering of freshwater unsuitable for consumption by farm animals;</li> </ul>	<p><b>55 Permitted activity conditions: sediment and stormwater control measures</b></p> <p><i>Sediment</i></p> <p>(1) Sediment originating from forestry quarrying must be managed to ensure that after reasonable mixing it does not give rise to any of the following effects in receiving waters:</p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is no material change to the controls between the Indicative and Exposure Drafts.</p>

<p>(c) any significant adverse effect on aquatic habitat.</p>	<p>(a) any conspicuous change in colour or visual clarity:  (b) the rendering of freshwater unsuitable for consumption by farm animals:  (c) any significant adverse effect on aquatic habitat.</p>	
<p><i>Sediment and stormwater control measures</i></p> <p>(11) All disturbed soil must be stabilised or contained to avoid it causing -</p> <p>(a) the diversion or damming of any waterbody; or</p> <p>(b) damage to downstream infrastructure, property or receiving environments including the costal environment.</p> <p>(12) Stormwater and sediment control measures must be installed and maintained.</p> <p>(13) Water run-off controls must be installed and maintained.</p> <p>(14) Batter, cuts and side castings construction must use methods that maintain stability.</p>	<p><i>Sediment and stormwater control measures</i></p> <p>(2) All disturbed soil must be stabilised or contained to avoid it causing—</p> <p>(a) the diversion or damming of any water body; or</p> <p>(b) damage to downstream infrastructure, property, or receiving environments including the costal environment.</p> <p>(3) Stormwater and sediment control measures must be installed and maintained.</p> <p>(4) Water run-off controls must be installed and maintained.</p> <p>(5) Batters, cuts, and side cast construction must use methods that maintain stability.</p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is no material change to the controls between the Indicative and Exposure Drafts.</p>
<p><i>Traffic management</i></p> <p>(15) Quarry material must only be transported on a public road where -</p> <p>(a) quarry material is being transported to a site under the same ownership or management; and</p> <p>(b) debris and soil is removed from wheels of vehicles transporting quarry material prior to vehicles exiting the forestry site; and</p> <p>(c) the material is transported 2000 metres or less; and</p>	<p><b>56 Permitted activity conditions: traffic management</b></p> <p>Quarry material must only be transported on a public road where—</p> <p>(a) quarry material is being transported to a property under the same ownership or management; and</p> <p>(b) debris and soil is removed from wheels of vehicles transporting quarry material before vehicles exiting the forestry property; and</p> <p>(c) the material is transported 2 000 m or less; and</p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with TA functions.</p> <p>There is no material change to the controls between the Indicative and Exposure Drafts.</p>

<p>(d) vehicles carrying quarry material do not travel through any area zoned as urban or peri-urban in a district, city or unitary plan.</p>	<p>(d) vehicles carrying quarry material do not travel through any area zoned in a district plan—</p> <ul style="list-style-type: none"> <li>(i) for urban use; or</li> <li>(ii) as a transition between urban areas and rural areas; or</li> <li>(iii) primarily for rural-residential or country living uses.</li> </ul>	
<p><i>Restoration</i></p> <p>(16) Within two months of the quarry being deactivated the land must be restored to a stable land form.</p> <p>(17) All topsoil stripped from the working area of a quarry must be retained on the site for future restoration of the land.</p>	<p><b>57 Permitted activity conditions: restoration and water table</b></p> <p><i>Restoration</i></p> <p>(1) Within 2 months of the quarry being deactivated, the land must be restored to a stable land form.</p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is no material change to the controls between the Indicative and Exposure Drafts (rule 17 has been moved to Rule 54 above).</p>
<p><i>Water table</i></p> <p>(18) The depth of a quarry must not be below the water table of any aquifer.</p>	<p><i>Water table</i></p> <p>(2) The depth of a quarry must not be below the water table of any aquifer.</p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions.</p> <p>There is no material change to the controls between the Indicative and Exposure Drafts (rule 17 has been moved to Rule 54 above).</p>
<p><i>Quarry Management Plan</i></p> <p>(19) A Quarry Management Plan must be prepared for any extraction of rock, sand, or gravel exceeding 200m<sup>3</sup> in volume.</p> <p>(20) The Quarry Management Plan must be made available to the council on request at least 20 working days before operations start.</p> <p>(21) Material amendments to the Quarry Management Plan must be provided to the relevant council. Material amendments are significant changes, for</p>	<p><b>58 Permitted activity conditions: quarry erosion and sediment management</b></p> <p>(1) A quarry erosion and sediment management plan that contains the details required by Schedule 4 must be prepared for any extraction of rock, sand, or gravel exceeding 200 m<sup>3</sup> in volume.</p> <p>(2) The quarry erosion and sediment management plan must identify the environmental risks associated with the quarrying activities and provide operational responses to those risks that avoid, remedy, or mitigate the adverse effects of the activity on the environment.</p>	<p>There is no change in jurisdiction.</p> <p>Controls/conditions are consistent with RC functions</p> <p>A detailed assessment for the requirements for the Quarry Management Plan has not been made. However, it is assumed that the requirements in the Exposure Draft are similar to those of the Indicative Draft.</p>

<p>example changes to the proposed controls for managing environmental impacts.</p> <p>(22) The Quarry Management Plan must include -</p> <ul style="list-style-type: none"> <li>(a) a description of the nature, scale, timing and duration of activities including construction and stabilisation;</li> <li>(b) the erosion and sediment control measures to be used and indicative locations, including - <ul style="list-style-type: none"> <li>(i) water run-off controls;</li> <li>(ii) methods to prevent slumping of batters, cuts and side castings;</li> <li>(iii) measures to maintain slope stability;</li> <li>(iv) methods of sediment retention and control of sediment run-off;</li> <li>(v) methods to avoid effects on riparian margins and water bodies;</li> </ul> </li> <li>(c) heavy rainfall response and contingency measures;</li> <li>(d) maintenance and monitoring procedures;</li> <li>(e) revegetation requirements.</li> </ul> <p>(23) Quarrying activities must be undertaken in accordance with the Quarry Management Plan.</p>	<ul style="list-style-type: none"> <li>(3) The quarry erosion and sediment management plan must be in place at least 20 working days before the forestry quarrying begins.</li> <li>(4) The quarry erosion and sediment management plan must be provided to the relevant council on written request. The council may request that the quarry erosion and sediment management be provided annually.</li> <li>(5) Material amendments to the quarry erosion and sediment management plan must be documented, dated, and made available to the council on request. If a council has previously requested a copy of the plan, the council must be advised of, and provided with, any subsequent amendments.</li> <li>(6) For the purpose of subclause (5), a <b>material amendment</b> is 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 environment effects.</li> <li>(7) If a quarry erosion and sediment management plan is required under subclause (1), any quarrying activities must be undertaken in accordance with the plan.</li> </ul>	
<p><b>n3 – Controlled activities</b></p> <p>(1) Quarrying is a controlled activity in Green, Yellow, and Orange Zones, except earthflow terrain, where -</p> <ul style="list-style-type: none"> <li>(a) n2(4), (5) and (15) are met; but</li> <li>(b) any other applicable permitted activity condition in n2 is not met.</li> </ul>	<p><b>59 Controlled activity</b></p> <p><i>Controlled activity: territorial authority</i></p> <p>(1) Forestry quarrying is a controlled activity if regulation 51 is not complied with.</p> <p><i>Matters over which control is reserved (TA)</i></p>	<p>Change in jurisdiction due to separation of functions.</p>

	<p>(2) In relation to an activity under subclause (1), control is reserved over the timing, location, and duration of the activity.</p>	
<p><i>Matters over which control is reserved</i></p> <p>(2) Control is reserved over the following matters -</p> <ul style="list-style-type: none"> <li>(a) the location and duration of works;</li> <li>(b) the area and volume of earthworks;</li> <li>(c) the disposal of fill and overburden;</li> <li>(d) the method of stabilisation of earthworks;</li> <li>(e) the method of sediment retention and run-off storm water control;</li> <li>(f) ecological and aquatic effects;</li> <li>(g) effects on riparian vegetation;</li> <li>(h) measures to rehabilitate land;</li> <li>(i) the dimensions of cut and fill;</li> <li>(j) effects on traffic and roading infrastructure.</li> </ul>	<p><i>Controlled activity: regional council</i></p> <p>(3) Forestry quarrying is a controlled activity in any green or yellow zone, or in any orange zone except in earthflow terrain, if any of regulations 51, 53(3) and (4), 54, 55, 57, and 58 is not complied with.</p> <p><i>Matters over which control is reserved (RC)</i></p> <p>(4) In relation to an activity under subclause (3), control is reserved over—</p> <ul style="list-style-type: none"> <li>(a) the timing, location, and duration of the activity:</li> <li>(b) the area and volume of forestry quarrying:</li> <li>(c) the disposal of fill and overburden:</li> <li>(d) the method of stabilisation of disturbed soil, fill, and overburden:</li> <li>(e) stormwater control:</li> <li>(f) sediment retention and run-off management methods:</li> <li>(g) effects on ecosystems, freshwater, and the coastal environment:</li> <li>(h) effects on vegetation in the riparian zone:</li> <li>(i) measures to rehabilitate land:</li> <li>(j) the dimensions of cut and fill.</li> </ul>	<p>Change in jurisdiction reflects separation of RC and TA functions.</p> <p>Controls are consistent with RC functions and are consistent with the Indicative Draft (with the exception of effects on traffic/roading).</p>
<p><b>n4 – Restricted discretionary activities</b></p> <p>(1) Quarrying is a restricted discretionary activity where any of n2(4), (5) or (15) are not met.</p>	<p><b>60 Restricted discretionary activity</b></p> <p><i>Restricted discretionary activity: territorial authority</i></p> <p>(1) Forestry quarrying is a restricted discretionary activity if any of regulations 52, 53(1) and (2), and 56 is not complied with.</p>	<p>Change in jurisdiction reflects separation of RC and TA functions.</p> <p>Controls are generally consistent with TA functions and consistent with Indicative Draft. Possible exceptions are:</p>

<p>(2) Quarrying is a restricted discretionary activity in earthflow terrain within the Orange Zone, and in the Red Zone.</p> <p>(3) Quarrying is a restricted discretionary activity where the land area is undefined in the Erosion Susceptibility Classification.</p>	<p><i>Matters to which discretion is restricted (TA)</i></p> <p>(2) In relation to an activity under subclause (1), discretion is restricted to—</p> <p>(a) the timing, location, and duration of the activity;</p> <p>(b) the area and volume of forest quarrying;</p> <p>(c) the disposal of fill and overburden;</p> <p>(d) the method of stabilisation of disturbed soil, fill, and overburden;</p> <p>(e) measures to rehabilitate land;</p> <p>(f) the dimensions of cut and fill;</p> <p>(g) the effects on traffic and public roading infrastructure.</p>	<ul style="list-style-type: none"> <li>▪ Clause (c) – should refer to the disposal of ‘excavated soil’ rather than ‘fill’ to be more consistent with Rule 53.</li> <li>▪ Clause (d) – which mirrors the same clause in the regional council controls below and appears to largely relate to sediment runoff/erosion.</li> <li>▪ Clause (f) -it is not clear what activity this clause relates to.</li> </ul>
<p><i>Matters to which discretion restricted</i></p> <p>(4) Discretion is restricted to the following matters –</p> <p>(a) the timing, location and duration of works;</p> <p>(b) the area and volume of earthworks;</p> <p>(c) the disposal of fill and overburden;</p> <p>(d) the method of stabilisation of earthworks;</p> <p>(e) the method of sediment retention and run-off stormwater control measures;</p> <p>(f) ecological and aquatic effects;</p> <p>(g) effects on riparian vegetation;</p> <p>(h) measures to rehabilitate land;</p> <p>(i) the dimensions of cut and fill;</p> <p>(j) effects on traffic and roading infrastructure.</p>	<p><i>Restricted discretionary activity: regional council</i></p> <p>(3) Forestry quarrying is a restricted discretionary activity in any—</p> <p>(a) red zone;</p> <p>(b) earthflow terrain in any orange zone;</p> <p>(c) area of land that is undefined in the erosion susceptibility classification.</p> <p><i>Matters to which discretion is restricted</i></p> <p>(4) In relation to an activity under subclause (3), discretion is restricted to—</p> <p>(a) the timing, location, and duration of the activity;</p> <p>(b) the area and volume of forest quarrying;</p> <p>(c) the disposal of fill and overburden;</p> <p>(d) the method of stabilisation of disturbed soil, fill, and overburden;</p>	<p>Change in jurisdiction reflects separation of RC and TA functions.</p> <p>Controls are consistent with RC functions and are consistent with Indicative Draft.</p>

	<ul style="list-style-type: none"><li>(e) stormwater control:</li><li>(f) sediment retention and run-off management methods:</li><li>(g) the effects on ecosystems, freshwater, and the coastal environment:</li><li>(h) the effects on vegetation in the riparian zone:</li><li>(i) measures to rehabilitate land:</li><li>(j) the dimensions of cut and fill.</li></ul>	
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## Harvesting

Indicative NES	Exposure Draft NES	
<p><b>n1 - Permitted activities</b></p> <p>(1) Harvesting is a permitted activity where -</p> <ul style="list-style-type: none"> <li>(a) the applicable conditions for harvesting in n2 are complied with; and</li> <li>(b) it is undertaken in the Red Zone where it involves no more than 2 hectares or 10% of the harvesting within any 3 month period, whichever is the lesser, and is not on land use capability class 8e.</li> </ul> <p>(2) Low intensity harvesting is a permitted activity where the applicable conditions in n2 are complied with.</p>	<p><b>62 Permitted activity</b></p> <p><i>Territorial authority</i></p> <p>(1) Harvesting is a permitted activity if regulation 63(1) and (2) is complied with.</p> <p><i>Regional council</i></p> <p>(2) Harvesting is a permitted activity if—</p> <ul style="list-style-type: none"> <li>(a) regulations 63 to 68 are complied with; and</li> <li>(b) it is undertaken in— <ul style="list-style-type: none"> <li>(i) a green, yellow, or orange erosion susceptibility classification zone;</li> <li>(ii) in a red zone that is not on land use capability 8e, where it involves no more than 2 ha of harvesting in any 3-month period.</li> </ul> </li> </ul> <p>(3) Harvesting where a minimum of 75% canopy cover is maintained at all times for any given hectare of plantation forest land (low-intensity harvesting) is a permitted activity in all erosion susceptibility classification zones if regulations 63 to 68 are complied with.</p>	<p>The key change to these provisions is a greater distinction between RC and TA functions. These are considered in respect of the various rules and associated conditions below.</p>
<p>(3) Any ancillary soil disturbance and discharges associated with these activities is permitted, including the –</p>	<p><b>93 Permitted activity: regional council</b></p> <p>(as for earthworks above)</p>	<p>There is a change in jurisdiction from TA/RC to RC only. This is appropriate as the activities are within RC functions under RMA s 30, 13, 14 and 15.</p>

<ul style="list-style-type: none"> <li>(a) disturbance of the bed of a river or lake; and</li> <li>(b) diversion of water; and</li> <li>(c) discharge of sediment or slash into water or onto land that may enter water.</li> </ul>		<p>Note that the identification of jurisdiction in the Indicative Draft is inconsistent with that of earthworks above for the same activities.</p>
<p><b>n2 – Permitted activity conditions</b></p> <p><i>Notifications</i></p> <ul style="list-style-type: none"> <li>(1) The relevant regional and district council must be notified of - <ul style="list-style-type: none"> <li>(a) the place where harvesting will be done; and</li> <li>(b) the dates on which it is intended that the harvesting will begin and end.</li> </ul> </li> <li>(2) Notification under n2(1) must occur – <ul style="list-style-type: none"> <li>(a) at least 20 and no more than 60 working days prior to planned commencement of harvesting, or</li> <li>(b) a minimum of 2 days before planned commencement of harvesting required for salvage operations, or</li> <li>(c) annually in the case of ongoing harvesting operations.</li> </ul> </li> </ul>	<p><b>63 Permitted activity conditions: notice</b></p> <p><i>Territorial authority and regional council</i></p> <ul style="list-style-type: none"> <li>(1) The relevant regional council and territorial authority must be provided with written notice of— <ul style="list-style-type: none"> <li>(a) the place where harvesting will be carried out; and</li> <li>(b) the dates on which the harvesting is planned to begin and end.</li> </ul> </li> <li>(2) Notice under subclause (1) must occur— <ul style="list-style-type: none"> <li>(a) at least 20 and no more than 60 working days before the date on which the harvesting is planned to begin; or</li> <li>(b) a minimum of 2 days before the date on which harvesting required for salvage operations is planned to begin; or</li> <li>(c) annually, in the case of ongoing harvesting operations.</li> </ul> </li> </ul> <p><i>Regional council</i></p> <ul style="list-style-type: none"> <li>(3) After a person gives notice under subclause (1), the council may request a copy of the harvest plan and the person must provide a copy of the harvest plan within 5 working days after the date by which the plan must be in place in accordance with regulation 65(2)(c).</li> </ul>	<p>This condition requires notification of RC/TA. Other than notification, the TA has no jurisdiction for other conditions.</p> <p>This is consistent with the Indicative Draft and considered appropriate as the nature of the controls and effects being managed are consistent with RC functions under RMA s 30 and s13, 14 and 15.</p>

<p><i>Sediment</i></p> <p>(3) Sediment originating from harvesting must be managed to ensure that after reasonable mixing it does not give rise to any of the following effects to receiving waters -</p> <ul style="list-style-type: none"> <li>(a) any conspicuous change in visual clarity;</li> <li>(b) the rendering of freshwater unsuitable for consumption by farm animals;</li> <li>(c) any significant adverse effect on aquatic habitat.</li> </ul>	<p><b>64 Permitted activity conditions: sediment</b></p> <p>Sediment originating from harvesting must be managed to ensure that after reasonable mixing it does not give rise to any of the following effects in the receiving waters:</p> <ul style="list-style-type: none"> <li>(a) any conspicuous change in colour or visual clarity;</li> <li>(b) the rendering of freshwater unsuitable for consumption by farm animals;</li> <li>(c) any significant adverse effect on aquatic habitat.</li> </ul>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>
<p><i>Harvest planning</i></p> <p>(4) A Harvest Plan, prepared in accordance with the template in schedule XYZ is required in all zones. The Harvest Plan must include mapping, environmental risk assessment and harvest risk management processes to avoid or mitigate effects on -</p> <ul style="list-style-type: none"> <li>(a) riparian zones; and</li> <li>(b) water bodies or the coastal marine area; and</li> <li>(c) downstream infrastructure, including - <ul style="list-style-type: none"> <li>(i) drinking water sources servicing more than 25 people, within 1km downstream of the harvesting; and</li> <li>(ii) properties or receiving environments; and</li> <li>(iii) significant natural areas.</li> </ul> </li> </ul> <p>(5) A Harvest Plan for the Orange and Red Zone, must be accompanied by an Erosion and Sediment Control Plan prepared in accordance with the template in schedule XXY.</p>	<p><b>65 Permitted activity conditions: harvest planning</b></p> <p>(1) A harvest plan is required for all erosion susceptibility classification zones.</p> <p>(2) A harvest plan must—</p> <ul style="list-style-type: none"> <li>(a) identify the environmental risks associated with the earthworks and provide operational responses to those risks that avoid, remedy, or mitigate the adverse effects of the activity on the environment; and</li> <li>(b) contain the details required by Schedule 3, but, if harvesting activities are to be undertaken without earthworks, there is no need to include the details required by clause 4 of that schedule or regulation 26; and</li> <li>(c) be in place at least 20 working days before harvesting begins, except where the harvesting is a salvage operation.</li> </ul> <p>(3) In the case of any orange or red zone, a harvest plan must be accompanied by a forestry earthworks</p>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>A detailed assessment of the requirements of a Harvest Plan has not been undertaken. However, it is assumed that it is consistent with that of the Indicative Draft.</p>

<p>(6) The Harvest Plan must be completed at least 20 working days before commencement of harvesting.</p> <p>(7) The Harvest Plan must be provided to the relevant council either on written request or provided annually on written agreement with the relevant council.</p> <p>(8) Material amendments to the Harvest Plan must be documented, dated, and made available to the relevant council on request. If a council has previously requested a copy of the Harvest Plan, council must be advised of and provided with any subsequent material amendments.</p> <p>(9) All harvesting must be carried out in accordance with the Harvest Plan and documented Harvest Plan changes.</p>	<p>management plan that contains the details required by Schedule 3, or a combined plan that contains all the details required by that Schedule may be provided.</p> <p>(4) The harvest plan must be provided to the relevant council on written request. The council may request that the harvest plan be provided annually.</p> <p>(5) Material amendments to the harvest plan must be documented, dated, and made available to the relevant council on request. If a council has previously requested a copy of the plan, council must be advised of and provided with any subsequent material amendments.</p> <p>(6) For the purpose of subclause (5), a <b>material amendment</b> is 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.</p> <p>(7) Any harvesting activities must be undertaken in accordance with the harvest plan.</p>	
<p><i>Ground disturbance outside setback areas</i></p> <p>(10) Harvest systems must be planned and located to achieve butt suspension wherever practicable.</p> <p>(11) All disturbed soil must be stabilised or contained to minimise the movement of sediment into any water body or coastal water resulting in –</p> <p>(a) the diversion or damming of any water body;</p> <p>(b) damage to downstream infrastructure, property or receiving environments including the coastal environment.</p>	<p><b>66 Permitted activity conditions: ground disturbance outside setback areas</b></p> <p>(1) Harvest systems must be planned and located to achieve butt suspension wherever practicable.</p> <p>(2) All disturbed soil must be stabilised or contained to minimise the movement of sediment into any water body or the coastal marine area resulting in—</p> <p>(a) the diversion or damming of any water body; or</p>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>The controls in the Exposure Draft are similar to, but slightly more stringent than, those of the Indicative Draft.</p>

	<ul style="list-style-type: none"> <li>(b) degradation of the aquatic habitat, riparian zone, freshwater body, or coastal environment; or</li> <li>(c) damage to downstream infrastructure and properties.</li> </ul>	
<p><i>Disturbance of the margins of water bodies and the coastal marine area</i></p> <p>(12) Disturbance to the margins of water bodies and the coastal marine area during harvesting must be limited by –</p> <ul style="list-style-type: none"> <li>(a) felling trees away from the water body, or riparian zone except where it is unsafe or impractical to do so. If it is unsafe or impracticable, trees must be felled directly across the water body for full-length extraction before de-limbing or heading; and</li> </ul> <p>(13) Full suspension must be achieved across rivers greater than 3 metres in width.</p> <p>(14) Harvesting machinery must not operate within the following setbacks, except where clause (15) applies –</p> <ul style="list-style-type: none"> <li>(a) within 5 metres of – <ul style="list-style-type: none"> <li>(i) a perennial river with a bank full channel width less than 3 metres;</li> <li>(ii) a wetland larger than 0.25 hectares;</li> </ul> </li> <li>(b) Within 10 metres of- <ul style="list-style-type: none"> <li>(i) a perennial river with a bank full channel width of 3 metres or more;</li> <li>(ii) a lake larger than 0.25 hectares;</li> </ul> </li> </ul>	<p><b>67 Permitted activity conditions: disturbance of the margins of water bodies and the coastal marine area</b></p> <ul style="list-style-type: none"> <li>(1) Trees must be felled away from any water body or riparian zone during harvesting, except where it is unsafe or impractical to do so, in order to limit disturbance to the margins of water bodies and the coastal marine area.</li> <li>(2) If the exception in subclause (1) applies, trees must be felled directly across the water body for full-length extraction before de-limbing or heading.</li> <li>(3) Full suspension tree harvesting in a manner that lifts the entire tree above the ground must be achieved across rivers greater than 3 m in width.</li> <li>(4) Harvesting machinery must not operate within the following setbacks, except where subclause (5) applies: <ul style="list-style-type: none"> <li>(a) within 5 m of— <ul style="list-style-type: none"> <li>(i) a perennial river with a bankfull channel width less than 3 m; or</li> <li>(ii) a wetland larger than 0.25 ha;</li> </ul> </li> <li>(b) within 10 m of— <ul style="list-style-type: none"> <li>(i) a perennial river with a bankfull channel width of 3 m or more; or</li> <li>(ii) a lake larger than 0.25 ha; or</li> </ul> </li> </ul> </li> </ul>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>The controls in the Exposure Draft are similar to those of the Indicative Draft. However, clause 14(b)(iv) has been removed. This rule provided a buffer around significant natural areas. It is not clear the basis for this and the extent of adverse effects that this would give rise to.</p>

<p>(iii) an outstanding freshwater body or surface water body subject to a water conservation order;</p> <p>(iv) a significant natural area;</p> <p>(c) Within 30 metres of the coastal marine area.</p> <p>(15) Harvesting machinery may operate in the above setbacks –</p> <p>(a) at waterbody crossing points; or</p> <p>(b) where slash removal is necessary; or</p> <p>(c) where essential for directional falling and extraction of trees from the riparian margin or coastal margin.</p> <p>(16) When harvesting occurs within or across a riparian zone, all disturbed vegetation, soil or debris must be deposited or placed in a position to minimise its entry to any water body, or the coastal marine area to avoid the following –</p> <p>(a) diversion, damming or erosion of any water body or coastal water;</p> <p>(b) degradation of any aquatic habitat or riparian zone;</p> <p>(c) damage to downstream infrastructure or property.</p>	<p>(iii) an outstanding freshwater body or surface water body subject to a water conservation order; or</p> <p>(c) within 30 m of the coastal marine area.</p> <p>(5) Harvesting machinery may operate in the setbacks required by subclause (4) if any disturbance to the water body from the machinery is minimised, and harvest machinery is operating—</p> <p>(a) at water body crossing points;</p> <p>(b) where slash removal is necessary;</p> <p>(c) where essential for directional felling in a chosen direction or extraction of trees from within the setbacks in subclause (4).</p> <p>(6) When harvesting occurs within or across a riparian zone, all disturbed vegetation, soil or debris must be deposited or placed in a position to minimise its entry to any water body, or the coastal marine area, to avoid—</p> <p>(a) diversion, damming, or erosion of any water body or coastal water;</p> <p>(b) degradation of any aquatic habitat or riparian zone;</p> <p>(c) damage to downstream infrastructure or property.</p>	
<p><i>Slash and debris management</i></p> <p>(17) Slash must be placed onto stable ground, and slash levels managed so slash does not accumulate to quantities that could cause collapse of slash piles on the edge of landing sites.</p>	<p><b>68 Permitted activity conditions: slash and debris management</b></p> <p>(1) Slash must be placed onto stable ground, and slash levels managed so slash does not accumulate to quantities that could cause collapse of slash piles on the edge of landing sites.</p>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>

<p>(18) To prevent potential land collapse at landings water and sediment controls must be installed and maintained.</p> <p>(19) Slash within the flood zone must be removed from water bodies unless it is unsafe or impracticable to do so if it is likely to mobilise in a rainfall event more frequent than 5% AEP, and have the following effects -</p> <ul style="list-style-type: none"> <li>(a) block or dam river flow; or</li> <li>(b) erode river banks; or</li> <li>(c) damage downstream infrastructure, property or receiving environments; or</li> <li>(d) significant adverse effects on aquatic habitat.</li> </ul>	<p>(2) To prevent potential land collapse at landings, water and sediment controls must be installed and maintained.</p> <p>(3) Unless doing so is unsafe or impracticable, slash within the 5% AEP flood zone must be removed from water bodies if it is likely to mobilise and have the following effects:</p> <ul style="list-style-type: none"> <li>(a) block or dam river flow; or</li> <li>(b) erode river banks; or</li> <li>(c) damage downstream infrastructure, property or receiving environments; or</li> <li>(d) significant adverse effects on aquatic habitat.</li> </ul>	
<p><b>n3 – Controlled activities</b></p> <p>(1) Harvesting is a controlled activity in Green, Yellow and Orange Zones where an applicable condition in n2 is not complied with.</p> <p>(2) Harvesting is a controlled activity in Red Zones that are not land use capability class 8e, where the threshold specified in n1(1)(b) is exceeded.</p>	<p><b>69 Controlled activity</b></p> <p><i>Controlled activity: territorial authority</i></p> <p>(1) Harvesting is a controlled activity if regulation 63(1) and (2) is not complied with.</p> <p><i>Matters over which control is reserved (TA)</i></p> <p>(2) In relation to an activity under subclause (1), control is reserved over the timing and duration of the activity.</p>	<p>Note previous comments re the efficiency of CA status for non-compliance with TA notification requirements.</p>
<p><i>Matters over which control is reserved</i></p> <p>(3) Control is reserved over the following matters -</p> <ul style="list-style-type: none"> <li>(a) the contents and implementation of the Harvest Plan and Erosion and Sediment Control Plan;</li> <li>(b) the method of harvesting;</li> <li>(c) the location, extent and timing of harvesting (including in relation to fish spawning);</li> </ul>	<p><i>Controlled activity: regional council</i></p> <p>(3) Harvesting is a controlled activity—</p> <ul style="list-style-type: none"> <li>(a) in any green, yellow, or orange zone if any of regulations 63 to 68 is not complied with:</li> <li>(b) in any red zone not on land use capability class 8e, where it involves more than 2 ha of harvesting in any 3-month period, if any of regulations 63 to 68 is not complied with.</li> </ul>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>

<ul style="list-style-type: none"> <li>(d) measures to address effects of harvesting on water quality, riparian vegetation, wetlands and the coastal marine area;</li> <li>(e) measures to address soil erosion during and after harvesting;</li> <li>(f) measures to contain and remove slash;</li> <li>(g) timing, location, species, and density of replanting.</li> </ul>	<p><i>Matters over which control is reserved</i></p> <p>(4) In relation to a controlled activity under subclause (3), control is reserved over—</p> <ul style="list-style-type: none"> <li>(a) the contents and implementation of the forestry earthworks management plan and the harvest plan;</li> <li>(b) the type and method of harvesting;</li> <li>(c) the location, extent, and timing of harvesting (including in relation to fish spawning);</li> <li>(d) measures to address effects of harvesting on water quality, vegetation in the riparian zone, wetlands, and the coastal marine area;</li> <li>(e) measures to minimise soil erosion during and after harvesting;</li> <li>(f) measures to contain and remove slash;</li> <li>(g) timing, location, species, and density of replanting.</li> </ul>	
<p><b>n4 – Restricted discretionary activities</b></p> <ul style="list-style-type: none"> <li>(1) Harvesting is a restricted discretionary activity in Red Zones with land use capability class 8e.</li> <li>(2) Harvesting is a restricted discretionary activity where the land area is undefined in the Erosion Susceptibility Classification.</li> </ul>	<p><b>70 Restricted discretionary activity: regional council</b></p> <p><i>Restricted discretionary activity</i></p> <p>(1) Harvesting is a restricted discretionary activity in—</p> <ul style="list-style-type: none"> <li>(a) any red zone with a land use capability class 8e;</li> <li>(b) any land that is undefined in the erosion susceptibility classification.</li> </ul>	<p>There is no material change to the activity classes</p>
<p><i>Matters to which discretion is restricted</i></p> <p>(3) Discretion is restricted to the following matters -</p> <ul style="list-style-type: none"> <li>(a) the contents of the Harvest Plan and Erosion and Sediment Control Plan;</li> <li>(b) the method of harvesting;</li> </ul>	<p><i>Matters to which discretion is restricted</i></p> <p>(2) Discretion is restricted to—</p> <ul style="list-style-type: none"> <li>(a) the contents of the forestry earthworks management plan and the harvest plan;</li> <li>(b) the type and method of harvesting;</li> </ul>	<p>There is no material change to the matters of discretion</p> <p>These matters are consistent with the functions of a RC.</p>

<ul style="list-style-type: none"> <li>(c) the location, extent and timing of harvesting (including in relation to fish spawning);</li> <li>(d) measures to address effects of harvesting on water quality, riparian vegetation, wetlands and the coastal marine area;</li> <li>(e) measures to address soil erosion during and after harvesting;</li> <li>(f) measures to contain and remove slash;</li> <li>(g) timing, location, species, and density of replanting.</li> </ul>	<ul style="list-style-type: none"> <li>(c) the location, extent, and timing of harvesting (including in relation to fish spawning):</li> <li>(d) measures to address effects of harvesting on water quality, vegetation in the riparian zone, wetlands, and the coastal marine area:</li> <li>(e) measures to minimise soil erosion during and after harvesting:</li> <li>(f) measures to contain and remove slash:</li> <li>(g) the timing, location, species, and density of replanting.</li> </ul>	
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## Ancillary Activities

Indicative NES	Exposure Draft NES	
<b>Slash Traps</b>		
<p><b>n1 – Permitted activities</b></p> <p>(1) Constructing, installing, using, maintaining and removing a slash trap in the bed of a river and on land including land within the setbacks specified in the harvesting and earthworks rules, is a permitted activity provided the applicable conditions in n2 are complied with.</p>	<p><b>80 Permitted activity</b></p> <p><i>Territorial authority</i></p> <p>(1) Constructing, installing, using, maintaining, and removing a slash trap in the bed of a river or on land, including land within the setbacks specified in regulations 28, 66, and 67, is a permitted activity.</p>	<p>This rule removes any jurisdiction for slash traps from the TA. However, in the Indicative Draft jurisdiction for the actual rules sat with RC – so there is little effect of this change and a PA with no conditions.</p>
<p>(2) Any ancillary soil disturbance and discharges associated with these activities is permitted, including the –</p> <p>(a) disturbance of the bed of a river; and</p> <p>(b) discharge of sediment into water.</p>	<p><b>93 Permitted activity: regional council</b></p> <p>(1) Any discharge of sediment or slash into water or onto land in circumstances that may result in it entering water, disturbance of the bed of the river or lake, or diversion of water associated with a plantation forestry activity is a permitted activity if subclause (2) and the following provisions are complied with:</p> <p>(a) for pruning and thinning to waste, regulations 19(2) and 20:</p>	<p>It is considered that this PA is consistent with RC functions in respect of the beds of lakes and rivers and land use controls. However, it is considered that the rule should refer to “a slash trap in <b>or on the bed of a river.</b>” consistent with RMA s 13</p> <p>These activities are consistent the s 30 functions of a RC.</p>

	<ul style="list-style-type: none"> <li>(b) for earthworks, regulations 24 to 32:</li> <li>(c) for river crossings, regulations 36 to 45:</li> <li>(d) for forestry quarrying, regulations 50(2), 51, 53(3) and (4), 54, 55, 57, and 58:</li> <li>(e) for harvesting, regulations 62(2) and (3), 63, and 64 to 68:</li> <li>(f) for mechanical land preparation, regulations 72(2) and 73:</li> <li>(g) for slash traps, regulations 80(2) and 81 to 88.</li> </ul>	
<p><b>n2 – Permitted activity conditions</b></p> <p><i>Design</i></p> <ul style="list-style-type: none"> <li>(1) The slash trap design must allow water to flow through freely and must not dam the river.</li> <li>(2) The level of the structure must be no higher than 1 metre above the bed of the river.</li> </ul>	<p><b>81 Permitted activity conditions: design</b></p> <ul style="list-style-type: none"> <li>(1) The slash trap design must allow water to flow through freely and must not dam the river.</li> <li>(2) The level of the structure must be no higher than 1 m above the bed of the river.</li> </ul>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>
<p><i>Placement</i></p> <ul style="list-style-type: none"> <li>(3) Where the catchment area upstream of the slash trap is greater than 5 hectares, the slash trap must not be located on the land and river bed covered by the annual flood flow of the river.</li> <li>(4) The slash trap must be located in a position that allows machine access for clearing and maintenance.</li> </ul>	<p><b>82 Permitted activity conditions: placement</b></p> <ul style="list-style-type: none"> <li>(1) Where the catchment area upstream of the slash trap is greater than 5 ha, the slash trap must not be located on the land and river bed covered by the annual flood flow of the river.</li> <li>(2) The slash trap must be located in a position that allows machine access for clearing and maintenance.</li> </ul>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>
<p><i>Inspection and clearance</i></p> <ul style="list-style-type: none"> <li>(5) The slash trap must be – <ul style="list-style-type: none"> <li>(a) inspected monthly and, in addition, inspected within five working days of any significant</li> </ul> </li> </ul>	<p><b>83 Permitted activity conditions: inspection and clearance</b></p> <ul style="list-style-type: none"> <li>(1) The slash trap must be—</li> </ul>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>

<p>rainfall event in the upstream catchment that is likely to mobilise debris, and</p> <p>(b) cleared of debris monthly and in addition cleared of debris within 20 calendar days following a rainfall event that results in a 5% AEP flood flow.</p> <p>(c) maintained to avoid erosion of the river bed and in a structurally sound and effective condition.</p> <p>(6) Debris cleared from the slash trap must be removed to a safe and stable location beyond river bed and land covered by the 5 % AEP flood flow of the river.</p>	<p>(a) inspected monthly and, in addition, inspected within 5 working days after any significant rainfall event in the upstream catchment that is likely to mobilise debris:</p> <p>(b) cleared of debris monthly and in addition cleared of debris within 20 calendar days following a rainfall event that results in a 5% AEP flood flow:</p> <p>(c) maintained to avoid erosion of the river bed and in a structurally sound and effective condition.</p> <p>(2) Debris cleared from the slash trap must be removed to a safe and stable location beyond river bed and land covered by the 5 % AEP flood flow of the river.</p>	
<p><i>Effect on other structures and users</i></p> <p>(7) The slash trap must not do any of the following –</p> <p>(a) alter the natural alignment of the river;</p> <p>(b) compromise the structural integrity or use of any other authorised infrastructure or activity in the bed of the river or lake;</p> <p>(c) cause flooding or ponding on any property owned or occupied by another person; or</p> <p>(d) cause or induce scour erosion of the bed, or erosion or instability of the banks of the water body;</p> <p>(e) alter the natural gradient of the river.</p>	<p><b>84 Permitted activity conditions: effect on other structures and users</b></p> <p>The slash trap must not do any of the following:</p> <p>(a) alter the natural alignment of the river:</p> <p>(b) compromise the structural integrity or use of any other authorised infrastructure or activity in the bed of the river or lake:</p> <p>(c) cause flooding or ponding on any property owned or occupied by another person:</p> <p>(d) cause or induce scour erosion of the bed, or erosion or instability of the banks, of the water body:</p> <p>(e) alter the natural gradient of the river.</p>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>
<p><i>Fish passage</i></p> <p>(8) The slash trap must be designed, located and maintained so that it provides for the passage of fish.</p>	<p><b>85 Permitted activity conditions: passage of fish</b></p>	<p>These controls/conditions are consistent with the functions of a RC.</p>

	The slash trap must be designed, located, and maintained so that it provides for the passage of fish	There is no material change to the controls
<p><i>Contaminant discharges from construction and removal</i></p> <p>(9) If a slash trap is being constructed, removed, maintained or cleared the following conditions must be complied with -</p> <p>(a) The activity must release no contaminants to water, other than sediment.</p> <p>(b) All practicable steps must be taken to -</p> <p>(i) avoid placing organic matter or soil into the river, or in a position where it could readily enter or be carried into a water body or coastal water; and</p> <p>(ii) minimise the disturbance of the bed.</p> <p>(c) The contact of wet concrete or concrete ingredients with flowing or standing water must be avoided.</p> <p>(d) The sediment discharge resulting into any river from the construction or removal of a slash trap must not occur for more than 8 consecutive hours.</p> <p>(e) All excess construction materials and equipment must be removed from the bed of the river within 5 working days of the completion of the slash trap construction.</p>	<p><b>86 Permitted activity conditions: contaminant discharges from construction and removal</b></p> <p>If a slash trap is being constructed, removed, maintained, or cleared, the following conditions must be complied with:</p> <p>(a) the activity must release no contaminants to water, other than sediment:</p> <p>(b) all practicable steps must be taken to—</p> <p>(i) avoid placing organic matter or soil into the river, or in a position where it could readily enter or be carried into a water body or coastal water; and</p> <p>(ii) minimise the disturbance of the bed:</p> <p>(c) the contact of wet concrete or concrete ingredients with flowing or standing water must be avoided:</p> <p>(d) the sediment discharge resulting into any river from the construction or removal of a slash trap must not occur for more than 8 consecutive hours:</p> <p>(e) all excess construction materials and equipment must be removed from the bed of the river within 5 working days of the completion of the slash trap construction.</p>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>
<p><i>Sediment</i></p> <p>(10) Sediment originating from disturbed soil from slashtraps must be managed in such a way to ensure</p>	<p><b>87 Permitted activity conditions: sediment</b></p> <p>Sediment originating from disturbed soil from slash traps must be managed to ensure that after reasonable mixing</p>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>

<p>that after reasonable mixing it does not give rise to any of the following effects to receiving waters –</p> <ul style="list-style-type: none"> <li>(a) any conspicuous change in visual clarity;</li> <li>(b) the rendering of freshwater unsuitable for consumption by farm animals;</li> <li>(c) any significant adverse effect on aquatic habitat.</li> </ul>	<p>it does not give rise to any of the following effects in receiving waters:</p> <ul style="list-style-type: none"> <li>(a) any conspicuous change in colour or visual clarity;</li> <li>(b) the rendering of freshwater unsuitable for consumption by farm animals;</li> <li>(c) any significant adverse effect on aquatic habitat.</li> </ul>	
<p><i>Reporting requirements</i></p> <p>(11) A written report must be provided to the Regional Council within 20 working days of the slash trap construction detailing location, design and construction. Photographic evidence of the slash trap must form part of the report.</p> <p>(12) A written report must be provided to the Regional Council annually by 31 March detailing the frequency of maintenance and clearance of the slash trap, slash trap condition and performance and any adverse effect resulting in any of the following –</p> <ul style="list-style-type: none"> <li>(a) damage to downstream infrastructure, property, or receiving environments;</li> <li>(b) disturbance of the bed of the river;</li> <li>(c) blockages to fish passage.</li> </ul>	<p><b>88 Permitted activity conditions: reporting requirements</b></p> <p>(1) A written report must be provided to the regional council within 20 working days of the slash trap construction detailing location, design and construction. Photographic evidence of the slash trap must form part of the report.</p> <p>(2) A written report must be provided to the regional council annually by 31 March detailing the frequency of maintenance and clearance of the slash trap, and slash trap condition and performance, including any of the following adverse effects:</p> <ul style="list-style-type: none"> <li>(a) damage to downstream infrastructure, property, or receiving environments;</li> <li>(b) disturbance of the bed of the river;</li> <li>(c) blockages to the passage of fish.</li> </ul>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls</p>
<p><b>n3 – Restricted discretionary activities</b></p> <p>(1) Constructing, installing, using, maintaining and removing a slash trap in the bed of a river and on land adjoining the bed including within the extent of the setbacks specified in the harvesting and earthworks rules</p>	<p><b>89 Restricted discretionary activity: regional council</b></p> <p><i>Restricted discretionary activity</i></p> <p>(1) Constructing, installing, using, maintaining, or removing a slash trap in the bed of a river or on land, including within the extent of the setbacks specified in regulations 28, 66, and 67, is a restricted</p>	<p>These controls/conditions are consistent with the functions of a RC.</p> <p>There is no material change to the controls.</p>

<p>is a restricted discretionary activity where any permitted activity condition is not complied with.</p>	<p>discretionary activity if any of regulations 81 to 88 is not complied with.</p>	
<p><i>Matters to which discretion is restricted</i>  (2) Discretion is restricted to the following matters -  (a) slash trap design, and construction;  (b) location, timing and duration;  (c) effectiveness to mitigate the effects of slash and debris mobilisation and downstream deposition;  (d) alternative measures to manage slash and debris mobilisation;  (e) river bed and bank stability and erosion;  (f) ecological and aquatic effects, including fish passage;  (g) water quality and flow;  (h) public use and public access to and along the river;  (i) effects on upstream and downstream properties and infrastructure and other users.</p>	<p><i>Matters to which discretion is restricted</i>  (2) Discretion is restricted to—  (a) slash trap design, and construction:  (b) the location, timing, and duration of the slash trap:  (c) the effectiveness of mitigation measures to manage the effects of slash and debris mobilisation and downstream deposition:  (d) alternative measures to manage slash and debris mobilisation:  (e) river bed and bank stability and erosion:  (f) the effects on ecosystems, including the passage of fish:  (g) water quality and flow:  (h) public use and public access to and along the river:  (i) the effects on upstream and downstream properties and infrastructure:  (j) the frequency and nature of inspection and reporting.</p>	<p>These controls/conditions are consistent with the functions of a RC.   There is no material change to the controls – with an additional control (j) in the Exposure Draft.</p>
<p><b>Indigenous vegetation clearance and disturbance</b></p>		
<p><b>n1 - Indigenous vegetation clearance and disturbance</b>  (1) Indigenous vegetation may be damaged, destroyed or removed provided it –</p>	<p><i>Indigenous vegetation clearance and disturbance</i>  <b>90 Permitted activity</b></p>	<p>Changed from General Condition in Indicative Draft to Ancillary Activity in Exposure Draft.</p>

<ul style="list-style-type: none"> <li>(a) has grown up under (or may have overtopped) managed forest species; or</li> <li>(b) is within an area of failed production planting (within the last rotation); or</li> <li>(c) is within an area of regenerating cutover (that is, within five years of the harvest of the previous crop); or</li> <li>(d) is vegetation overgrowing a pre-existing forestry access way, including an existing track or access way within a significant natural area, provided the track has been actively used within the last 50 years; or</li> <li>(e) is incidental damage to riparian vegetation; or</li> <li>(f) is incidental damage to indigenous vegetation that is adjacent to plantation forest, including indigenous vegetation within 30 metres of the edge of a significant natural area or along an existing track.</li> </ul> <p>(2) For the purposes of this rule incidental damage means -</p> <ul style="list-style-type: none"> <li>(a) damage to understory vegetation where the ecosystem will recover to a state where there has been no change in species composition within 12 months of the damage occurring; or</li> <li>(b) damage to canopy species vegetation greater than 5 metres in height which does not result in mortality of the damaged tree; and</li> </ul>	<p><i>Territorial authority and regional council</i></p> <ul style="list-style-type: none"> <li>(1) The clearance and disturbance of indigenous vegetation, including damage, destruction, or removal of vegetation, is a permitted activity if— <ul style="list-style-type: none"> <li>(a) any of paragraphs (a) to (g) of subclause (2) is complied with; and</li> <li>(b) it is undertaken after afforestation of a plantation forest.</li> </ul> </li> <li>(2) The permitted activity conditions are that— <ul style="list-style-type: none"> <li>(a) the indigenous vegetation has grown up under (or may have overtopped) managed forest species; or</li> <li>(b) the indigenous vegetation is within an area of failed production planting (within the last rotation); or</li> <li>(c) the indigenous vegetation is within an area of regenerating cutover (that is, within 5 years of the harvest of the previous crop); or</li> <li>(d) the indigenous vegetation is vegetation overgrowing a forestry access way, including a track or access way within a significant natural area, if the track or access way has been actively used within the last 50 years; or</li> <li>(e) the damage is incidental damage to vegetation in the riparian zone; or</li> <li>(f) the damage is incidental damage to indigenous vegetation that is adjacent to plantation forest, including indigenous vegetation up to the edge of a significant natural area; or</li> <li>(g) within any continuous area of predominantly indigenous vegetation, the maximum area of</li> </ul> </li> </ul>	<p>There is no change in jurisdiction between Indicative and Exposure Drafts for PA – joint across RC and TA. However, requirement for a consent has changed from RC to RC/TA.</p> <p>In respect of jurisdiction, the basis for RC control is not clear. The control of the effects of the use of land for the maintenance of indigenous biodiversity is a TA function (s31(1)(b)(iii)). Accordingly, it would appear more appropriate for jurisdiction for this function to sit with TAs.</p> <p>There is no material change to requirements – PA conditions in Indicative Draft contain an additional condition ((2)(g)). However, activity status has changed from discretionary to RD as discussed below.</p>
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<p>(c) if it occurs in a significant natural area it does not significantly affect the values which resulted in that significant natural area classification.</p>	<p>indigenous vegetation cleared or removed for all forestry activities is less than 1 hectare and no part of the vegetation clearance is within a significant natural area or within 30 m of water bodies or the coastal marine area.</p> <p>(3) In this regulation, <b>incidental damage</b>, in relation to vegetation, means—</p> <p>(a) damage to understory vegetation where the ecosystem will recover to a state where no change in species composition occurs within 12 months of the damage occurring; or</p> <p>(b) damage to indigenous trees that form part of the canopy and are greater than 5 m in height, where the damage does not result in the tree dying; or</p> <p>(c) if it occurs in a significant natural area, damage that does not significantly affect the values of that significant natural area.</p>	
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<p><b>Discretionary activities</b></p> <p>(1) All plantation forestry activities are discretionary where any of the following general conditions are not met –</p> <ul style="list-style-type: none"> <li>(a) fuel;</li> <li>(b) fish spawning;</li> <li>(c) indigenous vegetation disturbance.</li> </ul>	<p><b>91 Restricted discretionary activity</b></p> <p><i>Territorial authority and regional council</i></p> <p>(1) The clearance and disturbance of indigenous vegetation, including damage, destruction, or removal of vegetation is a restricted discretionary activity if none of paragraphs (a) to (g) of regulation 90(2) are complied with.</p> <p><i>Matters to which discretion is restricted</i></p> <p>(2) In relation to subclause (1), discretion is restricted to—</p> <ul style="list-style-type: none"> <li>(a) the ecological effects due to— <ul style="list-style-type: none"> <li>(i) the ecological significance of the indigenous vegetation; or</li> <li>(ii) the location and extent of indigenous vegetation removal; or</li> <li>(iii) the functioning of remaining indigenous vegetation, including edge effects and retention of corridors:</li> </ul> </li> <li>(b) the mitigation measures proposed:</li> <li>(c) alternatives to clearance and disturbance of indigenous vegetation.</li> </ul>	<p>There has been a change in jurisdiction from RC to RC/TA. As indicated above, it appears more appropriate for the jurisdiction to sit with TAs.</p> <p>In respect of the change in activity status from D to RD, the potential effect of the change depends on the coverage and relevance of the matters to which discretion has been retained. In this instance, the matters appear comprehensive and hence it is unlikely that there is any material effect of the change in activity status.</p>
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## General Provisions/Conditions

Indicative NES	Exposure Draft NES	Assessment of Jurisdiction/Change
<b>Discharges, disturbances, and diversions</b>		
<p>These were addressed in individual activities as identified in tables above</p>	<p><b>93 Permitted activity: regional council</b></p> <p>(1) Any discharge of sediment or slash into water or onto land in circumstances that may result in it entering water, disturbance of the bed of the river or lake, or diversion of water associated with a plantation forestry activity is a permitted activity if subclause (2) and the following provisions are complied with:</p> <ul style="list-style-type: none"> <li>(a) for pruning and thinning to waste, regulations 19(2) and 20:</li> <li>(b) for earthworks, regulations 24 to 32:</li> <li>(c) for river crossings, regulations 36 to 45:</li> <li>(d) for forestry quarrying, regulations 50(2), 51, 53(3) and (4), 54, 55, 57, and 58:</li> <li>(e) for harvesting, regulations 62(2) and (3), 63, and 64 to 68:</li> <li>(f) for mechanical land preparation, regulations 72(2) and 73:</li> <li>(g) for slash traps, regulations 80(2) and 81 to 88.</li> </ul>	<p>These are discussed above as they occur for each activity.</p>
<p><b>n1 - Fish spawning</b></p> <p>(1) The bed of a perennial river, and vegetation growing within the bed, must not be disturbed where -</p>	<p><i>Permitted activity conditions: fish spawning</i></p>	<p>No change in jurisdiction between Indicative and Exposure Drafts.</p>

<p>(a) the <i>NES-PF Fish Spawning Indicator</i> identifies presence of a fish species listed in Schedule XX or XY in the river reach where the disturbance occurs; and</p> <p>(b) the disturbance would occur during the relevant fish spawning period listed in Schedule XX or Schedule XY.</p> <p>(2) Conditions n1(1)(a)-(b) does not apply where – (a) a freshwater fish survey has been undertaken by a suitably competent person at the site within the past 12 months in accordance with <i>New Zealand Freshwater Fish Sampling Protocols (Joy, David &amp; Lake, 2013)</i>; and (b) the species have not been observed.</p> <p>(3) For the purposes of this rule, the following activities are not bed disturbance -</p> <p>(a) Fording by vehicles across the wetted river bed where the number of axle movements is less than 20 per day.</p> <p>(b) Logs hauled across the bed of a river less than 3 metres wide where butt suspension is achieved unless species listed in schedule XY are present.</p> <p>(c) Clearing a slash trap.</p> <p>(d) Removing a slash trap where it is necessary to prevent damage to downstream infrastructure, property or receiving environments.</p> <p><b>Discretionary activities</b></p>	<p>(2) Disturbance of the bed of a perennial river or vegetation in the bed of a perennial river must not occur where—</p> <p>(a) the NESPF fish spawning indicator indicates the presence of a fish species in the river where the bed would be disturbed; and</p> <p>(b) the river bed would be disturbed during the relevant fish spawning period shown in the fish spawning indicator.</p> <p>(3) For the purpose of subclause (2), the following are not considered to be disturbance of the perennial river bed or vegetation in the bed of a perennial river:</p> <p>(a) fording by vehicles across the wetted river bed where the number of axle movements is less than 20 per day:</p> <p>(b) logs hauled across the bed of a river less than 3 m wide where butt suspension is achieved unless <i>galaxias</i> or mud fish species included in the fish spawning indicator are present, and log hauling is undertaken in the relevant spawning time shown in the fish spawning indicator:</p> <p>(c) clearing a slash trap:</p> <p>(d) removing a slash trap where it is necessary to prevent damage to downstream infrastructure, property, or receiving environments.</p> <p>(4) Subclause (2) does not apply if a suitably competent person has—</p> <p>(a) undertaken a freshwater fish survey at the site within the past 12 months in accordance with <i>New Zealand Freshwater Fish Sampling</i></p>	<p>RC jurisdiction considered appropriate as it relates to RMA s13(1) regional plan controls.</p> <p>There is no material change to requirements. Non-compliance is a discretionary activity in both drafts.</p> <p>(Note a detailed assessment of the Fish Spawning schedule has not been undertaken).</p>
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<p>(1) All plantation forestry activities are discretionary where any of the following general conditions are not met –</p> <ul style="list-style-type: none"> <li>(a) fuel;</li> <li>(b) fish spawning;</li> <li>(c) indigenous vegetation disturbance.</li> </ul>	<p><i>Protocols</i> (Joy, David &amp; Lake, 2013) (see item 12 in Schedule 2); and</p> <ul style="list-style-type: none"> <li>(b) has not observed any of the species included in the fish spawning indicator.</li> </ul> <p>(5) For the purpose of subclause (4), a <b>suitably competent person</b> is a person who is a qualified fish scientist with experience in New Zealand freshwater fish identification.</p> <p><i>General: activity status</i></p> <p>(7) Disturbance of the bed of a perennial river is a discretionary activity if it does not comply with subclauses (2) to (5).</p>	
<p><b>General Conditions - Noise</b></p>		
<p><b>n1 - Noise</b></p> <p>(1) Noise from forestry activities must not exceed the following noise limits at any point within the notional boundary of any occupied building (excluding buildings on the same site as the forestry activity and sites under the same ownership or management) containing a lawfully established noise sensitive activity, if either that building existed or was consented at or before the afforestation commenced that resulted in the subsequent noise generating activity -</p> <ul style="list-style-type: none"> <li>(a) 75 dB LAeq (15 min) between 7 am and 7 pm on Monday to Saturday, at any assessment point where forestry noise is received for 20 weeks or less in a year;</li> </ul>	<p><i>Noise</i></p> <p><b>94 Permitted activity: territorial authority</b></p> <ul style="list-style-type: none"> <li>(1) Noise associated with a plantation forestry activity is a permitted activity if it complies with subclause (2)</li> </ul> <p><i>Permitted activity conditions</i></p> <ul style="list-style-type: none"> <li>(2) Noise associated with a plantation forestry activity must not exceed the following noise limits at any point within the notional boundary of any occupied building containing a noise-sensitive activity, except in the case of an occupied building located in the plantation forest or on an adjacent property under the same ownership and management as the plantation forest:</li> </ul>	<p>There is no change in jurisdiction between Indicative and Exposure Drafts.</p> <p>TA jurisdiction is considered appropriate (RMA s31(1)(d))</p> <p>There is no material change to requirements across the drafts.</p>

<p>(b) 70 dB LAeq (15 min) between 7 am and 7 pm on Monday to Saturday, at any assessment point where forestry noise is received for more than 20 weeks in a year;</p> <p>(d) 45 dB LAeq (15 min) between 7 pm and the following 7am;</p> <p>(e) 75 dB LAFmax between 7 pm and the following 7 am.</p> <p>(2) Noise must be measured in accordance with NZS 6801: 2008 Acoustics – Measurement of environmental sound and assessed in accordance with NZS 6801: 2008 Acoustics – Measurement of environmental sound.</p> <p>(3) Noise from Forestry Activities includes noise from forestry machinery, equipment and vehicles undertaking activities to which these regulations apply, but does not include noise from forestry vehicles on public roads.</p> <p>(4) In this condition noise does not include vibration.</p> <p><b>Controlled activities</b></p> <p>(1) Notwithstanding specific activity rules, all plantation forestry activities are controlled if the applicable conditions relating to that activity are complied with, but any of the following general activity conditions are not met –</p> <p>(a) dust;</p> <p>(b) noise;</p> <p>(c) nesting times.</p> <p>(2) Control is reserved over the following matters:</p>	<p>(a) Monday to Saturday, daytime—75 dB LAeq (15 min) between 7 am and 7 pm on Monday to Saturday, at any assessment point where forestry noise is received for 20 weeks or less in a year:</p> <p>(b) Monday to Saturday, daytime—70 dB LAeq (15 min) between 7 am and 7 pm on Monday to Saturday, at any assessment point where forestry noise is received for more than 20 weeks in a year:</p> <p>(c) Sunday daytime—45 dB LAeq (15 min) between 7 am and 7 pm on Sunday:</p> <p>(d) night time—45 dB LAeq (15 min) between 7 pm and the following 7am:</p> <p>(e) night time—75 dB LAFmax between 7 pm and the following 7 am.</p> <p><i>How noise measured and assessed</i></p> <p>(3) Noise must be measured in accordance with NZS 6801 and assessed in accordance with NZS 6802.</p> <p>(4) In this regulation,—</p> <p><b>LAeq</b> has the same meaning as in NZS 6801</p> <p><b>LAFmax</b> has the same meaning as in NZS 6801</p> <p><b>noise—</b></p> <p>(a) includes noise from forestry machinery, equipment, and vehicles undertaking activities to which these regulations apply; but</p> <p>(b) does not include—</p> <p>(i) noise from forestry vehicles on public roads; or</p>	
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<p>(a) If the dust general condition is not complied with, the method of controlling nuisance dust discharged to air that is carried onto adjoining properties or public roads.</p> <p>(b) If the noise general condition is not complied with, the timing, duration and location of activities that breach the permitted activity conditions and the effects on noise sensitive activities.</p> <p>(c) If the nesting time general condition is not complied with, the effect on ecological integrity of a significant natural area and measures to mitigate the effects on fauna.</p>	<p>(ii) vibration</p> <p><b>noise-sensitive activity—</b></p> <p>(a) means any—</p> <p>(i) residential activity, including activity in visitor accommodation or retirement accommodation:</p> <p>(ii) educational activity:</p> <p>(iii) health care activity:</p> <p>(iv) congregation within any place of worship:</p> <p>(v) marae; but</p> <p>(b) does not include an activity if it was not lawfully established</p> <p><b>notional boundary</b> means—</p> <p>(a) a line 20 meters from any side of a building; or</p> <p>(b) the legal boundary, where it is closer to the building sound</p> <p><b>NZS 6802</b> means NZS 6802:2008 Acoustics – Environmental noise</p> <p><b>occupied building</b> means a building that is regularly occupied by 1 or more people.</p> <p><b>95 Controlled activity: territorial authority</b></p> <p>(1) Noise associated with a plantation forestry activity is a controlled activity if it does not comply with regulation 94(2).</p> <p><i>Matters over which control is reserved</i></p>	
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	<p>(2) Control is reserved over—</p> <ul style="list-style-type: none"> <li>(a) the timing, duration, and location of noise-generating activities:</li> <li>(b) the effects on noise sensitive activities:</li> <li>(c) measures to avoid, remedy, or mitigate the adverse noise effects.</li> </ul>	
<p><b>General Condition - Dust</b></p>		
<p>n1 - Dust</p> <p>(1) The discharge of dust to air from plantation forestry activities on a site is permitted provided the following condition are complied with.</p> <p><i>Condition</i></p> <p>(2) There must be no airborne or deposited dust beyond the boundary of the site from which the dust is sourced that is noxious, objectionable or offensive. The boundary of the site includes the property on which the plantation forestry activity occurs and any other properties under the same ownership or under the same management as that property.</p> <p><b>Controlled Activity</b> – see noise above</p>	<p><b>96 Permitted activity: regional council</b></p> <p>(1) The discharge of dust to air associated with a plantation forestry activity is a permitted activity if subclause (2) is complied with.</p> <p><i>Permitted activity condition</i></p> <p>(2) There must be no airborne or deposited dust beyond the boundary of the property from which the dust is sourced that is noxious, objectionable, or offensive.</p> <p>(3) For the purpose of subclause (2), <b>boundary of the property</b> includes the legal boundary of property on which the plantation forestry activity occurs and any other properties adjoining that property under the same ownership or management.</p> <p><b>97 Controlled activity: regional council</b></p> <p>(1) The discharge of dust to air associated with a plantation forestry activity is a controlled activity if it does not comply with regulation 96(2).</p> <p><i>Matter over which control is reserved</i></p>	<p>There is no change in jurisdiction between Indicative and Exposure Drafts.</p> <p>The management of dust is often managed by both RC and TA and this could be an area of joint/overlapping responsibility. However, as the activity is a discharge to air, and the responsibility for activities likely to give rise to dust (earthworks, harvesting etc) lie with RCs, it is considered that jurisdiction more appropriately sit with RCs.</p> <p>RC RMA s30/s15 responsibilities are considered sufficient to manage adverse effects.</p> <p>There is no material change to requirements across the drafts.</p>

	<p>(2) Control is reserved over the method of controlling dust discharged to air.</p>	
<p><b>Indigenous Bird Nesting</b></p>		
<p><b>n1 - Nesting</b></p> <p>(1) Where indigenous bird species with a classification of Nationally Critical or Nationally Endangered (in the New Zealand Threat Classification System) nest in the plantation forest and the forestry activity will occur during the species nesting season, foresters must have and comply with procedures to -</p> <p>(a) Recognise the presence of those species within the area of the plantation forest impacted by the activity;</p> <p>(b) Upon confirmation of presence, identify nest sites within the area of the plantation forest impacted by activity; and</p> <p>(c) protect these sites from disturbance.</p> <p><b>Controlled Activity</b> – see noise above</p>	<p><b>98 Permitted activity condition: regional council</b></p> <p>(1) A plantation forestry activity occurring in or at the following places and times must comply with the procedures required by subclause (2)—</p> <p>(a) where nesting of indigenous bird species with a classification of Nationally Critical or Nationally Endangered (in the Department of Conservation’s, <i>Conservation Status of New Zealand Birds 2012</i> (Robertson et al, 2013) occurs; and</p> <p>(b) during the nesting season of the indigenous bird species identified in paragraph (a).</p> <p><i>Permitted activity condition</i></p> <p>(2) Procedures must be in place and followed to—</p> <p>(a) recognise the presence of indigenous bird species; and</p> <p>(b) on confirmation of presence, identify affected nest sites; and</p> <p>(c) protect those nest sites from disturbance.</p> <p><b>99 Controlled activity: regional council</b></p>	<p>There is a change in jurisdiction between the Indicative and Exposure Drafts, from joint RC/TA to RC only.</p> <p>This change in jurisdiction is not consistent with the respective functions of RC and TA under RMA s30 and 31. TAs have the function of controlling land use to maintain indigenous biodiversity (s31(1)(b)(iii)), whereas RCs have no similar function. Accordingly, it would appear more appropriate for jurisdiction for this function to sit with TAs.</p> <p>There is no material change to requirements.</p>

	<p>(1) A plantation forestry activity is a controlled activity if regulation 98(2) is not complied with.</p> <p><i>Matters over which control is reserved</i></p> <p>(2) Control is reserved over the effects on indigenous birds and measures to mitigate those effects.</p>	
<p><b>General Condition - Fuel</b></p>		
<p>n1 - Fuel</p> <p>(1) During any plantation forestry activity fuel must not be stored and machinery must not be refuelled in any location where fuel can enter water, including -</p> <p>(a) within 10 metres of –</p> <p>(i) a perennial river;</p> <p>(ii) wetlands;</p> <p>(iii) lakes;</p> <p>(iv) an outstanding freshwater body;</p> <p>(v) surface water bodies subject to water conservation orders;</p> <p>(b) within 30 metres of the marine coastal area;</p> <p>(c) on, over or in the bed of a surface water body or the coastal marine area;</p> <p>(d) within a surface water body or coastal water.</p> <p>(2) During any plantation forestry activity fuel must not be discharged to water, or the bed of a surface water body or land in circumstances where the fuel can enter water.</p>	<p><i>Fuel storage and refuelling</i></p> <p><b>100 Permitted activity: regional council</b></p> <p>(1) Fuel storage and refuelling associated with a plantation forestry activity are permitted activities if subclauses (2) and (3) are complied with.</p> <p><i>Permitted activity conditions</i></p> <p>(2) Fuel must not be stored and machinery must not be refuelled in any location where fuel can enter water, including—</p> <p>(a) within 10 m of—</p> <p>(i) a perennial river; or</p> <p>(ii) wetlands; or</p> <p>(iii) lakes; or</p> <p>(iv) an outstanding freshwater body; or</p> <p>(v) surface water bodies subject to water conservation orders:</p> <p>(b) within 30 m of the coastal marine area:</p>	<p>There is a change in jurisdiction between the Indicative and Exposure Drafts, from joint RC/TA to RC only. However, it should be noted that only a regional consent was required where the PA conditions are not met.</p> <p>RC (s30(1)(c)(v)) and TA (s31(1)(b)(ii)) have overlapping functions in respect of the storage, use etc of hazardous substances and management responsibility could lie with either party (should management by a single party be desirable). In this instance, where the primary adverse effects are associated with the unintended discharge of fuel into a waterbody, it is considered appropriate that the jurisdiction for managing these controls sits with RC. Note that under the Indicative Draft, responsibility for consents sat with the RC.</p> <p>There is a change to requirements – with a change in consent activity status from Discretionary to RD. The implication of this is that only those matters to which discretion has been retained can be assessed. While the identified matters include effects on ecosystems etc they</p>

	<p>(c) on, over, or in the bed of a surface water body or the coastal marine area:</p> <p>(d) within a surface water body or coastal water.</p> <p>(3) Fuel must not be discharged to water, or the bed of a surface water body, or land in circumstances where the fuel can enter water.</p>	<p>could be enhanced and made clearer by the addition of matters such as:</p> <ul style="list-style-type: none"> <li>▪ management and containment; and</li> <li>▪ spill response procedures.</li> </ul>
<p><b>Discretionary activities</b></p> <p>(1) All plantation forestry activities are discretionary where general conditions are not met –</p> <ul style="list-style-type: none"> <li>(a) fuel;</li> <li>(b) fish spawning;</li> <li>(c) indigenous vegetation disturbance.</li> </ul>	<p><b>101 Restricted discretionary activity: regional council</b></p> <p>(1) Fuel storage and refuelling associated with a plantation forestry activity is a restricted discretionary activity if it does not comply with regulation 100(2) or (3).</p> <p><i>Matters over which discretion is restricted</i></p> <p>(2) Discretion is restricted to—</p> <ul style="list-style-type: none"> <li>(a) the effects on ecosystems, freshwater, and the coastal environment;</li> <li>(b) the location of fuel storage and refuelling.</li> </ul>	



