



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

Plan Alignment Guidance - May 2018

Prepared for Ministry for Primary Industries
By 4Sight Consulting Limited

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1 INTRODUCTION

1.1 PURPOSE OF GUIDANCE

This document is part of a package of guidance developed by the Ministry for Primary Industries (MPI) to support the interpretation and implementation of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (NES-PF). The NES-PF provides a nationally consistent set of provisions to manage the environmental effects of *plantation forestry activities* under the Resource Management Act 1991 (RMA). The NES-PF applies to any forest of at least one hectare planted for commercial purposes that will be harvested¹.

The underlying policy objectives of the NES-PF are to:

- Maintain or improve the environmental outcomes associated with *plantation forestry activities*; and
- Increase the efficiency and certainty of managing *plantation forestry activities*.

This guidance is focused on helping councils align their plans to recognise the NES-PF in accordance with the requirements of the RMA and where plan rules may be more stringent than the NES-PF. In particular, this document provides guidance on:

- The 'NES-PF plan alignment process' based on the legal relationship between plan rules and National Environmental Standards (NES)
- How to identify where a plan rule duplicates or conflicts with the NES-PF
- Making changes to plans to align with the NES-PF through removing or amending rules, and including references in plans to direct plan users to the NES-PF
- Regulation 6 - the circumstances when plan rules may be more stringent than the NES-PF
- Activities and effects not regulated under the NES-PF that continue to be managed by regional and district rules and/or other legislation.

This guidance includes examples of plan rules that duplicate or conflict with the NES-PF and rules that may be more stringent than the regulations. These examples are intended to provide additional context and guidance to assist with the plan alignment process. However, each council will need to go through the process of assessing the relationship of their plan rules with the NES-PF based on the legal relationships set out in sections 43A, 43B and 44A of the RMA.

Terms that are defined in the NES-PF have been identified in *italics* in this guide and are explained further as relevant.

¹ **Plantation forest** or **plantation forestry** is defined in the NES-PF as follows: "*means a forest deliberately established for commercial purposes, being—*

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

1.2 KEY MESSAGES

Plan Alignment:

- The NES-PF came into force on 1 May 2018. The NES-PF prevails over any plan rules that duplicate or conflict from this date.
- Section 44A of the RMA requires all councils to identify **where plan rules duplicate or conflict** with the NES-PF and **remove that duplication or conflict**. This must be done **as soon as practicable** after the date the NES-PF came into force.
- Rules that duplicate or conflict with the NES-PF can be removed or amended **without using the Schedule 1 process**. References/advisory notes directing plan users to the NES-PF can also be added to plans without using the Schedule 1 process. It is good practice to issue a public notice advising of the changes (but not mandatory).
- The most appropriate method to address duplication or conflict will depend on the rule:
 - **Forestry specific rules should be generally removed or amended** so that they do not duplicate or conflict with the NES-PF; or
 - When general rules duplicate or conflict with the NES-PF but also apply to other activities (e.g. *earthworks*), **an advisory note or reference should be inserted** to clarify that the NES-PF prevails over the rule for *plantation forestry activities*. The rule can also be amended to specifically exclude the relevant *plantation forestry activity*.

Rules that may be more stringent² (Regulation 6):

- Councils need to assess whether they have **plan rules that are more stringent than the NES-PF** and, if so, whether these meet the requirements of Regulation 6 of the NES-PF. Regulation 6 expressly states where plan rules may be more stringent than the NES-PF in accordance with section 43B of the RMA.
- When a proposed rule is more stringent than the NES-PF, section 32(4) requires the evaluation to specifically consider whether **a more stringent rule is justified in the context of the region/district**. If a council considers that a more stringent rule than the NES-PF is justified, this should be clearly documented in the section 32 report.
- It is good practice to **provide certainty on where a plan rule is more stringent** than the NES-PF. This can be achieved by:
 - Inserting advisory notes to alert plan users to rules that are more stringent than the NES-PF and that it prevails because it meets one of the requirements in Regulation 6;
 - Providing information and advice to foresters on where they still need to comply with plan rules under Regulation 6 (e.g. in a publicly available document or on a fact sheet); and
 - Providing internal practice notes to ensure consistent implementation of the NES-PF.

Activities and effects not regulated under NES-PF:

- The NES-PF covers the majority of the activities and effects associated with *plantation forestry*. However, there are **forestry related activities and effects not regulated under the NES-PF** that will continue to be managed under the relevant plan and/or other legislation.
- Where the NES-PF states that an activity is permitted, **a plan rule may only deal with effects of that activity that are different from the effects dealt with in the NES-PF (section 43A(5)(b))**. For example, the effects on cultural and historic heritage are excluded from the NES-PF and plan rules continue to manage these effects.

² The NES-PF does not allow rules to be more lenient therefore any plan rule that is more lenient than the NES-PF provisions conflicts (section 44A (2) (b)).

1.3 OVERVIEW OF GUIDANCE

The three main NES-PF guides available to download on the MPI website and supporting industry guidance are shown in Figure 1. There is also the option of downloading specific sections of the guides on the NES-PF guidance webpage³.

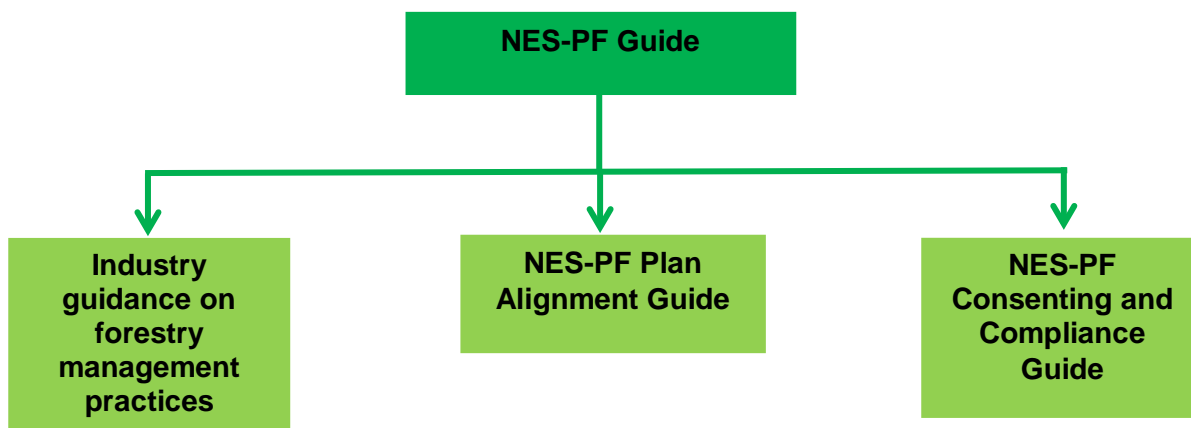


Figure 1: General structure of the NES-PF guidance.

The [NES-PF User Guide](#) provides detailed information on the NES-PF provisions and conditions and is targeted at all implementers (councils) and users (foresters) of the NES-PF. The [NES-PF User Guide](#) should be referred to in conjunction with this guide to understand the provisions in the NES-PF and where plan rules duplicate or conflict with the NES-PF.

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

1.4 UNDERSTANDING THE NES-PF

It is important to have a good understanding of the NES-PF provisions before undertaking the plan alignment process. This is necessary to identify where plan rules may duplicate or conflict with the NES-PF and what changes to regional and district plans may be required. In particular, it is important to understand:

- The eight core *plantation forestry activities* regulated under the NES-PF, the scope of those activities as defined in Regulation 3 and the permitted activity conditions for those activities
- The three ancillary activities regulated under the NES-PF and the general provisions which apply to *all plantation forestry activities*
- The functions of regional councils and territorial authorities in relation to each of the NES-PF regulated activities and general provisions.

Table 1 provides a high-level overview of which local authority has functions under the NES-PF for each of the core regulated *plantation forestry activities*, the ancillary activities and general provisions. Most functions in the NES-PF relate to regional council functions, but territorial authorities have some functions in relation to certain *plantation forestry activities*.

The [NES-PF User Guide](#) provides a full explanation of the regulations, how the regulations work, and the functions of regional councils and territorial authorities for NES-PF regulated activities and conditions.

³ Refer: <https://www.mpi.govt.nz/growing-and-harvesting/forestry/national-environmental-standards-for-plantation-forestry/nas-pf-guidance/>

Table 1: Summary of regional council and territorial functions under the NES-PF.

NES-PF provision	Local authority with functions for regulated activity and conditions
Core plantation forestry activities – afforestation, forestry quarry, harvesting ⁴ and replanting	Regional council and territorial authority
Core plantation forestry activities – pruning and thinning-to-waste, earthworks, river crossings and mechanical land preparation	Regional council
Ancillary activity – slash traps	Regional council
Ancillary activity – indigenous vegetation clearance	Territorial authority
Ancillary activity – non-indigenous vegetation clearance	Regional council and territorial authority
General provisions – discharges, disturbances and diversions, fuel storage and refuelling	Regional council
General provisions – noise and vibration	Territorial authority
General provisions – dust, bird nesting	Regional council and territorial authority

1.5 STRUCTURE OF THIS DOCUMENT

This guide is structured as follows:

- **Section 2:** provides an overview of the NES-PF plan alignment process
- **Section 3:** provides guidance on how to identify rules that duplicate or conflict with the NES-PF and how to make changes to plans to remove duplication or conflict in accordance with section 44A of the RMA
- **Section 4:** provides guidance on where plan rules may be more stringent than the NES-PF in accordance with Regulation 6
- **Section 5:** includes examples of *plantation forestry* related activities and effects not regulated under the NES-PF which continue to be managed through regional and district plans and/or other legislation.

⁴ The only harvesting condition in relation to territorial authority functions relates to notice of harvesting – all other harvesting conditions are regional council functions.

2 OVERVIEW OF PLAN ALIGNMENT PROCESS

The NES-PF came into force on 1 May 2018. As soon as practicable after this date, regional councils and territorial authorities need to align their plans with the NES-PF in accordance with the legal relationship between NES and plans set out in sections 43A, 43B and 44A of the RMA (refer to [Appendix A](#) for a list of these provisions). The NES-PF plan alignment process should have begun well before 1 May 2018 to ensure the necessary changes are made promptly after this date.

The NES-PF plan alignment process involves two main components:

- Identifying rules that duplicate or conflict with the NES-PF and removing the duplication or conflict “as soon as practicable” after the NES-PF comes into force (section 44A); and
- Identifying where a plan rule may be more stringent than the NES-PF⁵ under Regulation 6 (section 43B(1)-(2)) as a matter of good practice⁶.

The changes that need to be made to plans will depend on the nature of individual rules. For example:

- Forestry specific rules (i.e. rules that only relate to *plantation forestry activities*)⁷ will generally need to be removed or amended so that they no longer apply to *plantation forestry activities* (although they may still apply to other forms of forestry).
- General rules (e.g. rules for earthworks, river crossings) will need to be retained for non-forestry users with a reference or advisory note added to the plan directing users to the requirements of the NES-PF. The rule can also be amended to specifically exclude the relevant *plantation forestry activity*.
- Rules that are more stringent under Regulation 6 should be clearly identified as a matter of good practice which can be done by amending the plan to include a reference to the NES-PF. Supporting information such as fact sheets can also be provided to foresters operating in the region/district to clarify when plan rules still need to be complied with in addition to the NES-PF.

In some cases, this is expected to be a straightforward exercise to identify general rules that relate to *plantation forestry activities*, and would simply require the addition of an advisory note directing plan users to the NES-PF. In other circumstances this exercise may be more involved, particularly where the plan has a range of forestry specific and general rules and associated conditions relating to *plantation forestry activities*.

This section provides a summary of the NES-PF plan alignment process and [section 3](#) of this guide provides more detailed guidance on this process.

2.1 RELATIONSHIP BETWEEN NES AND REGIONAL AND DISTRICT PLAN RULES

Sections 43A, 43B and 44A of the RMA outline the legal relationship between NES and local authority plans. This applies to rules in a plan or proposed plan, and the usual tests in section 86B apply in terms of when rules have legal effect.

⁵ The NES-PF does not expressly allow rules to be more lenient than the NES-PF therefore any rule that is more lenient conflicts (section 44A(2)(b)).

⁶ There is no requirement to identify rules that may be more stringent than a NES under section 43B(1). However, this forms part of the process to identify whether a more stringent rule conflicts with a provision in a NES under 44A(2)(ii) and is also good practice to provide certainty to plan users.

⁷ Some forestry specific rules relate to forms of forestry (e.g. soil conservation forestry) other than production plantation forestry as defined in the NES-PF. These rules will generally need to be amended to exclude plantation forestry and/or the definition of forestry in the plan amended where relevant.

2.1.1 RULES THAT CONFLICT WITH THE NES-PF PROVISIONS

Section 43B(1)-(3) and section 44A(2) set out the circumstances when rules conflict with the NES-PF. Section 44A(2) of the RMA states that a plan rule conflicts with a NES if:

- **Section 44A(2)(a) - it is more stringent than a NES provision and the NES does not expressly say it may be more stringent** – a rule is more stringent than a NES provision if it prohibits or restricts an activity the standard permits or authorises. This may be through a more stringent activity status, a more restrictive condition, or both. Regulation 6 of the NES-PF outlines the circumstances when plan rules may be more stringent. If a more stringent plan rule is not expressly allowed under Regulation 6, it conflicts with the NES-PF; or
- **Section 44A(2)(b) - it is more lenient than the NES provision and the NES expressly says that it may be more lenient** - a rule is more lenient than a NES provision if it permits or authorises an activity the NES prohibits or restricts. The NES-PF does not allow plan rules to be more lenient than the regulations. As such, any plan rule for a plantation forestry activity that is more lenient than the NES-PF conflicts with the NES-PF.

2.1.2 RULES THAT DUPLICATE THE NES-PF PROVISIONS

The RMA does not specify when a rule duplicates a provision in a NES. However, in practice there are essentially two tests to consider:

1. **The rule is not more stringent or lenient than the NES;** and
2. **The rule addresses effects dealt with in the NES:** section 43A(5)(b) states that plan rules may only deal with effects that are different from those dealt with in the NES. If the terms and conditions in the plan deal with the same effects, then the rule duplicates and the NES prevails (section 43A(5)(c)).

2.1.3 REMOVING DUPLICATION OR CONFLICT WITH THE NES-PF

Where plan rules duplicate or conflict with a provision in the NES-PF, section 44A of the RMA states that local authorities must amend their plan or proposed plan to remove the duplication or conflict:

- Without using the RMA Schedule 1 process; and
- “As soon as practicable” after the date the NES comes into force⁸.

The NES-PF will prevail over any rule that duplicates or conflicts with the NES-PF provisions until these changes are made. Ministry for Primary Industries (MPI) will be monitoring when and how councils make changes to their plans in accordance with section 44A and this will be included in the formal review of the implementation of the NES-PF one year after it comes into force.

2.2 SUMMARY OF THE PLAN ALIGNMENT PROCESS

Figure 2 demonstrates the steps that need to be undertaken as part of the NES-PF plan alignment process, and Figure 3 illustrates this process as a flow diagram.

⁸ Duplication or conflict is not dealt with in the NES-PF through section 43A(1)(e) which allows rules that the standard applies to continue to have effect. Therefore the provisions in section 44A(3) are not relevant and local authorities need to determine how to best address duplication or conflict with the NES-PF in their plans.

Step 1 – Review plan provisions

Completely review plan provisions (existing and proposed) to identify what provisions relate to *plantation forestry activities* as defined in the NES-PF. Before undertaking this exercise, it is important to have a good understanding of the *plantation forestry activities* regulated under the NES-PF and the functions of regional councils and territorial authorities in relation to each activity.

Step 2 – Categorise rules

Once relevant rules have been identified they should then be categorised as follows:

- **Category 1 - forestry specific rules:** these are rules that relate specifically to *plantation forestry activities* regulated under the NES-PF;
- **Category 2 - general rules:** these are general rules (e.g. *earthworks, river crossings*) which manage the effects of *plantation forestry activities* regulated under NES-PF but also manage other activities.

Step 3 - Identify potential conflict or duplication, and where rules may be more stringent

The next step is to determine whether the rule (and associated conditions):

1. **Conflicts with NES-PF provision(s):** a rule conflicts with NES-PF provisions if:
 - It is more lenient than the NES-PF; or
 - It is more stringent than the NES-PF and the NES-PF does not expressly say it may be more stringent.
2. **Duplicates NES-PF provision(s):** a plan rule duplicates NES-PF provisions if it deals with the same activity and effects as the NES-PF and is neither more stringent or lenient.
3. **Is more stringent than the NES-PF:** rules may only be more stringent than the NES-PF when the NES-PF expressly states this. More stringent plan rules need to be carefully assessed to determine whether they meet the requirements of Regulation 6.

Step 4 – Identify the plan amendments required

Steps 2 and 3 above will determine the amendments required to plan rules as follows:

- **Forestry specific rules that duplicate or conflict:** these will either need to be:
 - i. **Removed** where the rule deals with effects that are all dealt with by the NES-PF; or
 - ii. **Amended** where terms and conditions in the rule also address effects not dealt with in the NES-PF. In these situations, the rule should be amended to remove the part of the rule that duplicates or conflicts with the NES-PF so that the amended rule only deals with effects that are different from the NES-PF.
- **General rules that duplicate or conflict:** these rules will need to be retained as they also manage other activities. However, an advisory note or similar should be added to the plan/rule directing plan users to the requirements in the NES-PF (examples can be found in section 3.3). This will help provide clarity to plan users that the NES-PF prevails over that rule in relation to *plantation forestry activities*.
- **Plan rules that are more stringent than the NES-PF:** it is good practice to clearly identify in a plan where a rule is more stringent than the NES-PF. This can be done through amending the plan to include a reference or advisory note that clearly states what regulation(s) the rule prevails over and why (i.e. if a clause in Regulation 6 expressly says it may be more stringent).

Figure 2: Overview of main steps in the NES-PF plan alignment process.

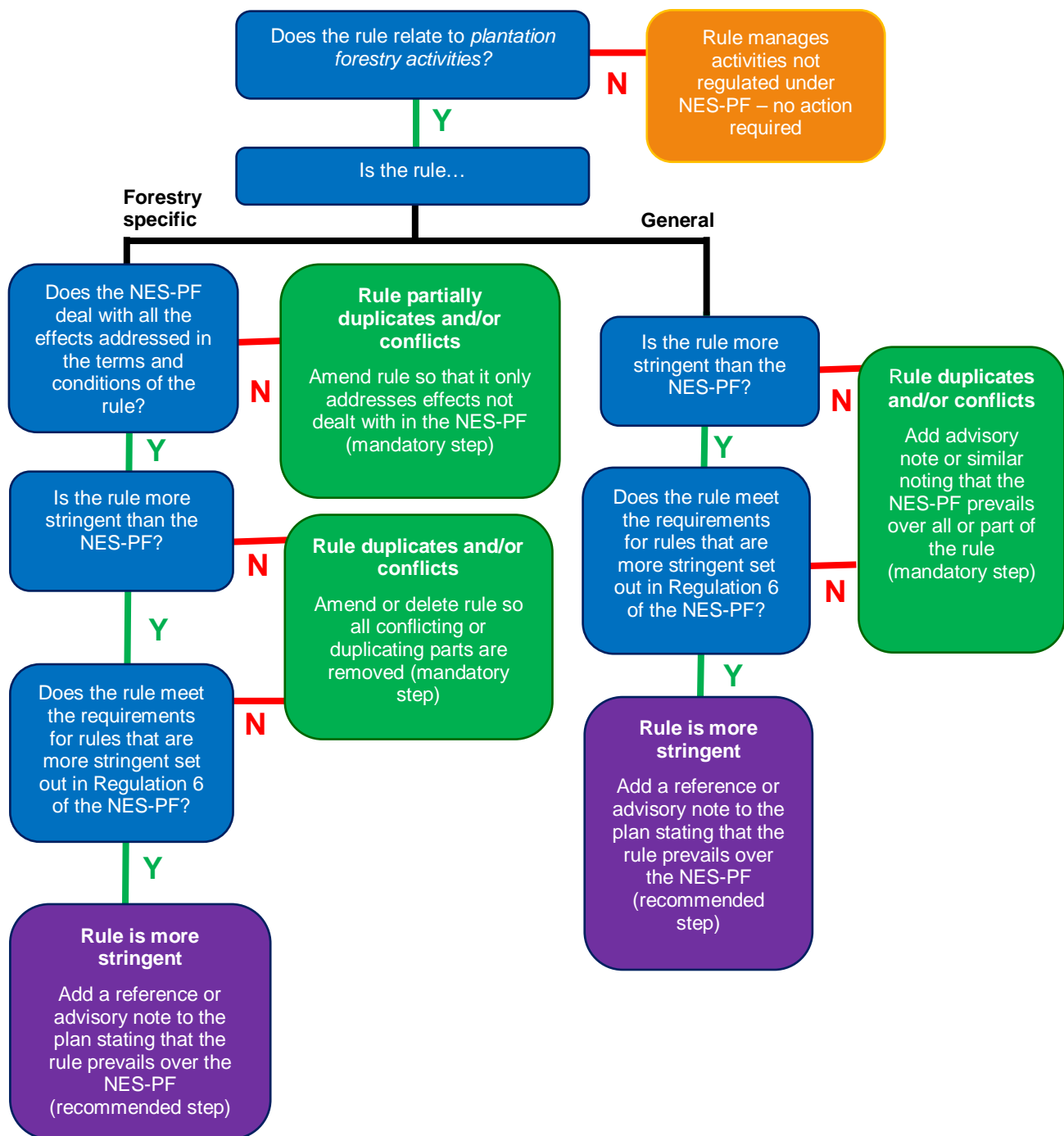


Figure 3: Flow chart of the NES-PF Plan Alignment process.

Once this process has been completed it is good practice to issue a public notice or similar to advise plan users that these changes have been made to the plan. Supporting documentation could also be made available to plan implementers and foresters to demonstrate how the legal relationships and tests set out above have been applied. This will also provide clarity on where compliance with plan rules may still be required.

3 PLAN ALIGNMENT – RULES THAT DUPLICATE OR CONFLICT WITH THE NES-PF

3.1 SECTION 44A – LOCAL AUTHORITY RECOGNITION OF NES

Section 44A of the RMA outlines how local authorities are required to recognise a NES. This states that when a rule in a proposed plan or existing plan duplicates or conflicts with a NES, a local authority must remove that duplication or conflict. [Section 2.1](#) of this guide outlines when a plan rule duplicates or conflicts with the NES-PF.

When identifying the relationship between NES-PF provisions and plan rules:

- District rules should be assessed against the regulations where territorial authorities have functions.
- Regional rules should be assessed against the relevant regulations where regional councils have functions.

The first clause within each subpart of the NES-PF outlines which class of local authority (territorial authority or regional council) has functions for each NES-PF provision. The specification of functions in the NES-PF for each local authority is intended to avoid duplication and promote efficiencies in implementation.

Where plan rules duplicate or conflict with provisions in the NES-PF, under section 44A(4)-(5)⁹ of the RMA, local authorities must amend their plan or proposed plan to remove the duplication or conflict:

- Without using the RMA Schedule 1 process
- “As soon as practicable” after the date the NES comes into force.

Section 44A(6) also of the RMA enables councils to amend their plans to include references to a NES without using the Schedule 1 process after 1 May 2018. Such references can highlight where the NES-PF may prevail over general rules (e.g. *earthworks*) and will generally be the most straightforward approach to address duplication or conflict and direct plan users to the NES-PF. This will provide more clarity for plan users.

The transitional period of the NES-PF, from gazettal on 3 August 2017 to commencement on 1 May 2018, was intended to enable councils to identify where plan rules duplicate or conflict with the NES-PF provisions in advance so that the necessary changes are made promptly after it comes into force. MPI will be monitoring council progress with the plan alignment process and this will be included in the report to the Minister for the Environment and Minister of Forestry on the implementation of the NES-PF one year after it comes into force.

There is no requirement in the RMA to notify plan changes made in accordance with section 44A of the RMA. However, it is good practice to issue a public notice advising of the amendments and/or make a note of this on the web page for the plan. Once a council has amended its plan in accordance with section 44A of the RMA, there should be no confusion about which requirements apply to *plantation forestry activities*.

3.2 EXAMPLES OF PLAN RULES THAT DUPLICATE OR CONFLICT WITH THE NES-PF

This section provides examples of forestry specific and general plan rules that duplicate and/or conflict with the NES-PF provisions. The list of conditions in these tables is not exhaustive and there are other parts of the rules that duplicate or conflict. [Appendix C](#) and [Appendix D](#) provide

⁹ Duplication or conflict is not dealt with by the NES-PF therefore the provisions in section 44A(3) are not relevant and local authorities need to determine how to best address duplication or conflict with the NES-PF in their plans.

these rules in full along with a more detailed explanation of where the rules and conditions duplicate and conflict with the NES-PF provisions.

3.2.1 EXAMPLES OF FORESTRY SPECIFIC RULES THAT DUPLICATE AND/OR CONFLICT WITH THE NES-PF

Table 2 provides a summary of forestry specific plan rules that duplicate and/or conflict with the NES-PF. These examples are current at the time of publication and each council will need to assess their own rules to determine whether they duplicate or conflict with the NES-PF.

Table 2: Examples of forestry rules that duplicate or conflict with the NES-PF.

Plan	Rules that duplicate/conflict
<p><i>Rotorua District Plan (Operative, 2016)</i></p>	<p>Part 9 Rule 16 – Forestry</p> <p>The <i>plantation forestry activity</i> specific rule for the Rural Zone in the Rotorua District Plan both conflicts and duplicates the NES-PF provisions. For example:</p> <p><u>Duplication:</u></p> <ul style="list-style-type: none"> • The District Plan includes a minimum setback requirement for <i>afforestation</i> of 30 metres to the boundary of a residential zone. This duplicates Regulation 14(1)(c) of the NES-PF; and • The District Plan includes a requirement to setback <i>afforestation</i> to avoid shading of a public road between 10am and 2pm on the shortest day of the year. This duplicates Regulation 14(2) of the NES-PF. <p><u>Conflict:</u></p> <ul style="list-style-type: none"> • The District Plan includes a setback requirement for <i>afforestation</i> of 30 metres from a dwelling whereas Regulation 14(1)(b)(i) of the NES-PF includes a setback requirement of 40 metres to dwellings. The District Plan rule is more lenient and conflicts with the NES-PF; and • The District Plan includes a setback requirement for <i>afforestation</i> of 30 metres to rural zones whereas there are no setback requirements in the NES-PF to rural zones. The requirement is more stringent and conflicts with the NES-PF.
<p><i>Kaipara District Plan (Operative, 2013)</i></p>	<p>Rule 12.10.10 – Separation Distance from Plantation Forestry</p> <p>This <i>plantation forestry activity</i> specific rule for the Rural Zone in the Kaipara District Plan conflicts with the NES-PF.</p> <p>The District Plan rule states that “<i>any building or plantation forestry activity is permitted if a 30m separation is maintained between any building and the plantation forestry on a separate site and under separate ownership</i>”. This conflicts with the NES-PF provisions for the following reasons:</p> <ul style="list-style-type: none"> • It is more lenient as it requires a 30 metre setback to buildings under separate ownership whereas the NES-PF requires a setback for afforestation of at least 40 metre to a dwelling on a separate property; and • It applies to a ‘building’ whereas the setbacks in the NES-PF apply to a ‘dwelling’ (i.e. a building used for residential purpose). In this respect, the district rule is more stringent than the NES-PF as it imposes a setback on a wider range of buildings (e.g. the definition of building includes those used to house animals or machinery), not just those used for residential purposes.
<p><i>Greater Wellington Natural Resources Plan (Proposed 2015)</i></p>	<p>Rule 102 – Plantation Forestry harvesting on erosion prone land</p> <p>The <i>plantation forestry activity</i> specific rule in the proposed regional plan both conflicts with and duplicates the NES-PF provisions. For example:</p> <ul style="list-style-type: none"> • Rule 102.a duplicates the NES-PF as it requires a harvest plan to be prepared. The content in Schedule O of the Proposed Natural Resources Plan is similar to the

Plan	Rules that duplicate/conflict
	<p>harvest plan requirements in Schedule 3 of the NES-PF but not all requirements of the NES-PF are covered. Therefore, this condition and the Schedule also conflict;</p> <ul style="list-style-type: none"> • Rule 102.b and c. are similar to regulations 67 and 69 in the NES-PF to manage slash and ensure disturbed soil does not dam or divert water. However, these conditions are worded differently, and may result in different outcomes. Therefore, these standards conflict with the NES-PF; • Rule 102.d states that worked areas must be revegetated within 18 months after harvesting. This is more stringent than the NES-PF and conflicts. The NES-PF does not explicitly require revegetation/replanting within a set timeframe after harvesting but the definition of replanting states replanting must occur within 5 years; and • Rule 102.e (ii, iv and v) duplicate Regulations 26 and 65 of the NES-PF which relate to the effects of sediment discharges in receiving water bodies. Both requirements are based on the water quality standards in section 70 of the RMA.

3.2.2 EXAMPLES OF GENERAL RULES THAT DUPLICATE AND/OR CONFLICT WITH THE NES-PF

Table 3 provides a summary of general rules that duplicate and/or conflict with the NES-PF. These examples are current at the time of publication and each council will need to assess their own rules to determine whether they duplicate or conflict with the NES-PF.

Table 3: Examples of general rules that duplicate and/or conflict with the NES-PF.

Plan	Rules that duplicate/conflict
<p><i>Hawke's Bay Regional Resource Management Plan (Operative 2006)</i></p>	<p>Rule 7 – Vegetation clearance and soil disturbance</p> <p>The general vegetation clearance and soil disturbance rules in the Hawke's Bay Regional Resource Management Plan both conflicts with and duplicates the NES-PF as follows:</p> <p><u>Duplication:</u></p> <ul style="list-style-type: none"> • Rule 7.a states that vegetation, disturbed soil and debris must be deposited or contained to prevent the transportation or deposition of disturbed matter into any waterbody. This duplicates Regulation 30(2) of the NES-PF; and • Rule 7.b states that vegetation clearance or soil disturbance shall not give rise to any significant change in the colour or clarity of any adjacent water body, after reasonable mixing. This duplicates Regulation 26 of the NES-PF. <p><u>Conflict:</u></p> <ul style="list-style-type: none"> • Rule 7.d restricts the movement of soil across property boundaries and introduces a maximum movement volume of 10kg/m². This is more stringent than NES-PF as the regulations do not control the movement of soil across property boundaries and it conflicts as it does not meet the requirements of Regulation 6.
<p><i>Regional Plan: Water for Otago (Operative 2016)</i></p>	<p>Rule 13.2.1.7 – Single Span Bridges</p> <p>The rules managing single span bridges in the Regional Plan: Water for Otago conflict with and duplicate the NES-PF as follows:</p> <p><u>Duplication:</u></p> <ul style="list-style-type: none"> • Rule 13.2.1.7.a states that a single span bridge should not cause any flooding or property damage. This duplicates Regulation 39 of the NES-PF; and • Rule 13.2.1.7.e states that a bridge and its abutments must be secured against bed erosion, flood water and debris loading. This duplicates Regulation 41 of the NES-PF. <p><u>Conflicts:</u></p>

Plan	Rules that duplicate/conflict
	<ul style="list-style-type: none"> Rule 13.2.1.7.b specifies a maximum bridge length of 20 metres for any 250 metre stretch of lake or river. This condition is more stringent than the NES-PF as there are no location or bridge length restrictions placed on single span bridges over lakes and rivers.
<i>Regional Air Quality Plan for Northland (Operative 2005)</i>	<p>Rule 10.2 – Dust</p> <p>Rule 10.2.a includes a requirement that the discharge of dust from earthworks does not result in any dust nuisance that is offensive or objectionable to neighbouring landowners/occupiers, including their properties. This duplicates Regulation 100 of the NES-PF which is a general provision applying to all <i>plantation forestry activities</i>.</p>

3.3 REMOVING DUPLICATION OR CONFLICT WITH THE NES-PF

There are two main methods to remove duplication or conflict with the NES-PF. The most appropriate method will be determined by the nature of the rule:

- **Forestry specific rules** – these will generally need to be removed or amended to remove duplication or conflict. Where the forestry rule applies to forms of forestry other than *plantation forestry* as defined in the NES-PF, then the rule and/or definition will need to be amended so that it no longer applies to *plantation forestry*.
- **General rules** – the most appropriate method will generally be to add an advisory note or reference in the plan directing plan users to the requirements of the NES-PF. The rule could also be amended to specifically exclude the relevant *plantation forestry activity*.

Guidance on these two options is provided below along with supporting examples.

3.3.1 REMOVING AND AMENDING RULES TO REMOVE DUPLICATION OR CONFLICT

Forestry specific plan rules will generally need to be removed or amended to remove duplication or conflict with the NES-PF. An amendment to the plan rule will generally be the required action where the rule relates specifically to a *plantation forestry activity* but the rule also deals with effects not addressed by the NES-PF. Such rules will need to be carefully reviewed and amended by council staff to ensure there is no change in how the rule manages effects not addressed in the NES-PF.

A rule should only be removed when it duplicates or conflicts with the NES-PF provisions and the activity and the effects it addresses are dealt with entirely in the NES-PF. In these situations, a note could be added to the plan explaining why the rule was removed and directing plan users to the requirements in the NES-PF. This would be an interim measure until the section of the plan is next reviewed. For example, this could state:

“Rule ‘x – harvesting’ was removed as it conflicts with the harvesting regulations in the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017. The requirements for harvesting in Regulations 62-71 prevail over the plan and must be complied with.

Table 4 provides examples of amendments to plan rules to remove duplication or conflict with the NES-PF. Suggested amendments to rules are ~~struck out~~ or underlined, and suggested advisory notes are in *italic*. These examples are current at the time of publication and each council will need to review the rules in their plan to determine what amendments may be required to address duplication or conflict.

Table 4: Examples of rule amendments where rules duplicate/conflict to remove the duplication/conflict.

Plan	Suggested amendment to rule that duplicates/conflicts	Comment
<p><i>Taupo District Plan (Operative, 2007 (revised 2017))</i></p>	<p>Rule 4b.1.14 – Maximum noise</p> <p><u>Other noise</u></p> <p>i. Nothing in the foregoing Performance Standards shall apply to farm animals including working dogs, and to agricultural vehicles, and forestry logging vehicles on public roads, agricultural and forestry machinery or equipment (including mobile plant at produce packing facilities) but excluding sawmilling equipment), operated and maintained in accordance with the manufacturer’s specifications in accordance with accepted management practices (e.g. for milking, spraying, harvesting, packing, forest harvesting and the like). Provided that the activity shall comply with the requirements of S16 of the Resource Management Act 1991.</p> <p>ii. <u>Nothing in the foregoing performance standards shall apply to noise associated with plantation forestry activities regulated under the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017. Regulation 100 includes conditions for noise and vibration associated with plantation forestry activities within a plantation forest.</u></p>	<p>The rule as currently worded conflicts with Regulation 98 of the NES-PF relating to noise from <i>plantation forestry activities</i>.</p> <p>However, the regulations do not regulate milling activities or the processing of timber (refer to NES-PF definition of harvesting).</p> <p>The NES-PF also does not regulate the effects of logging truck movements on public roads. Rule 4b.1.14 should therefore be amended to ensure that:</p> <ul style="list-style-type: none"> • The exception to the noise rules in the plan will continue to apply to forestry logging vehicles; and • The references to noise from forestry activities covered by the NES-PF (e.g. harvesting) are removed; and • It is clear that noise from <i>plantation forestry activities</i> is regulated under the NES-PF.
<p><i>Hawke’s Bay Regional Resource Management Plan (Operative, 2006)</i></p>	<p>Rule 7 Vegetation clearance and soil disturbance</p> <p>c. No vegetation clearance shall occur within 5 metres of any permanently flowing river, or any other river with a bed width in excess of 2 metres, or any other lake or wetland, except that this condition shall not apply to:</p> <p>i. the clearance of plantation forestry established prior to the date of this Plan becoming operative,</p> <p>i. the areas identified in Schedule X to this Plan.</p> <p><u>Advisory note:</u> <u>This rule does not apply to harvesting or plantation forestry, or vegetation clearance and soil disturbance associated with plantation forestry activities regulated under the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017. Those regulations prevail over this rule in relation to plantation forestry activities.</u></p>	<p>The rule includes a specific reference to an exception for plantation forestry in condition c. and therefore conflicts with the NES-PF as it is more lenient.</p> <p>Rule 7c. should be amended so that the exemption relating to the clearance of <i>plantation forestry</i> is removed.</p> <p>An advisory note could also be added to make it clear that the rule does not apply to harvesting, vegetation clearance and soil disturbance associated with <i>plantation forestry activities</i> regulated under the NES-PF.</p>
<p><i>Canterbury Land and</i></p>	<p>Rule 5.167 – Vegetation clearance⁹</p>	<p>This rule will no longer apply to harvesting/vegetation clearance</p>

Plan	Suggested amendment to rule that duplicates/conflicts	Comment
<p><i>Water Regional Plan (Operative 2017)</i></p>	<p>The use of land for vegetation clearance outside the bed of a river or lake or adjacent to a wetland boundary but within:</p> <ol style="list-style-type: none"> a. 10 m of the bed of a lake or river or a wetland boundary in Hill and High-Country land or land shown as High Soil Erosion Risk on the Planning Maps; or b. 5 m of the bed of a lake or river or a wetland boundary in all other land not shown as High Soil Erosion Risk on the Planning Maps or defined as Hill and High Country on the Planning Maps; <p>and any associated discharge of sediment or sediment-laden water in circumstances where sediment may enter surface water is a permitted activity, provided the following conditions are met:</p> <ol style="list-style-type: none"> 1. Except in relation to recovery activities, the area of bare ground resulting from vegetation clearance: <ol style="list-style-type: none"> a. does not exceed 10% of the area within the relevant riparian margin at any time; or b. is undertaken in accordance with a Farm Environment Plan that has been prepared in accordance with Schedule 7 Part A; or e. for plantation forestry activities is undertaken in accordance with the Environmental Code of Practice for Plantation Forestry (ECOP) 2007; and ...[conditions continue] <p>⁹ <u>Note this rule does not apply to harvesting and vegetation clearance associated with plantation forestry activities under the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017. Those regulations prevail over this rule in relation to plantation forestry activities.</u></p>	<p>regulated under the NES-PF. Therefore, an advisory note should be added to the plan to direct plan users to the NES-PF. A footnote has been used in this example.</p> <p>The rule also needs to be amended to remove specific references to <i>plantation forestry activities</i> in standard 1.c to avoid confusion with the NES-PF provisions.</p>

3.3.2 INCLUDING A REFERENCE TO THE NES-PF IN PLANS

Section 44A(6) of the RMA enables councils to amend their plans to include a reference to NES:

- Without using the Schedule 1 process
- Any time after the date the NES comes into force.

References or advisory notes in RMA plans can be an effective way to highlight the requirements of the NES. They are particularly suited to general rules that duplicate or conflict with the NES-PF but also apply to other activities.

There are two main approaches to including a reference to a NES in a plan which are outlined below. Where the plan has no forestry specific rules, option 1 is recommended to provide greater clarity to plan users where the NES-PF prevails over general rules in the plan. This option can also involve minor amendments to the rule itself to specifically exclude the relevant *plantation forestry activity*.

3.3.2.1 Option 1 - Include advisory notes in the plan to reference the NES-PF

This option involves inserting an advisory note(s) to alert users to the requirements of the NES. The existing provisions are retained and an advisory note is included next to the relevant rule or in appropriate sections of the plans where forestry related provisions are found. This is the most appropriate option to identify where the NES-PF prevails over general rules in the plan that apply to a range of activities (e.g. plan rules relating to *earthworks, river crossings, forestry quarrying and vegetation clearance*). This is also likely to be the best approach for rules that relate to the effects addressed in the general provisions such as noise, dust, and fuel storage and refuelling.

To provide added certainty, the rule could also be amended to specifically exclude the relevant *plantation forestry activity*. For example, a general earthworks rule could be amended to specifically exclude *plantation forestry earthworks* with the advisory note then directing plan users to the NES-PF requirements.

It is important to draft advisory notes in a clear and specific manner. It is generally preferable to identify specific regulations in the NES-PF that prevail over the identified rule rather than making a general reference to the NES-PF. For example, if the generic rule relates to earthworks, then the advisory note could reference regulations 22-35 of the NES-PF as follows:

"Rule x does not apply to the earthworks associated with plantation forestry activities as these are regulated under regulations 22-35 of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017. These regulations prevail over this rule in relation to plantation forestry earthworks as defined in the regulations."

When inserting and drafting advisory notes, care must be taken to ensure the readability and clarity of the plan section/rule is not affected. Common places to include advisory notes are before rule tables or directly next to the relevant rule. The best approach will depend on the format of the plan and the nature of the rules. A footnote can also be a useful way to insert an advisory note to clearly identify when the NES-PF prevails over a rule without adding too much bulk to the plan.

Table 5 below provides examples of how advisory notes and footnotes could be drafted for generic rules that duplicate or conflict with the NES-PF. Suggested amendments to rules are underlined and suggested advisory notes/footnotes are in *italic*. In the second example, the rule has also been amended to specifically exclude the discharge of dust associated with *plantation forestry activities*.

Table 5: Suggested advisory notes that reference the NES-PF.

Plan	Existing rule/amendment	Suggested advisory note/footnote
<i>Regional Plan: Water for Otago (Operative, 2016)</i>	<p>Rule 13.2.1.7 – Single span bridges</p> <p>The erection or placement of any single span bridge including for pipes over the bed of a lake or river, or any Regionally Significant Wetland, is a permitted activity, providing:</p> <ul style="list-style-type: none"> (a) The bridge or its erection or placement, does not cause any flooding, nor cause any erosion of the bed or banks of the lake or river, or Regionally Significant Wetland, or property damage; and (b) No more than 20 metres of bridge occurs on any 250 metre stretch of any lake or river; and (c) There is no reduction in the flood conveyance of the lake, river or Regionally Significant Wetland; and (d) The bridge soffit is no lower than the top of the higher river bank; and 	<p><i>Rule 13.2.1.7 does not apply to the erection or placement of any single span bridge associated with plantation forestry activities as these are regulated under regulations 36-45, 46(5) and 47-49 of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017. Those regulations prevail over this rule in relation to single span bridges for the operation of a plantation forest as defined in those regulations.</i></p>

Plan	Existing rule/amendment	Suggested advisory note/footnote
	(e) The bridge and its abutments are secured against bed erosion, flood water and debris loading; and (f) Where the bridge is intended for use by stock, measures are taken to avoid animal waste entering the lake, river or Regionally Significant Wetland; and (g) If the bridge is situated over or on public land, then public access over the public land is maintained.	
<i>Regional Air Quality Plan for Northland (Operative, 2005)</i>	Rule 10.2 – Dust The discharge of dust to air from activities associated with earthworks, road and rail construction or maintenance (but excluding dust associated with <u>plantation forestry activities</u>) ⁹ is a Permitted Activity provided that: a) The discharge does not result in any dust nuisance that is offensive or objectionable to neighbouring landowners/occupiers, including their properties.	⁹ <i>Rule 10.2 does not apply to the discharge of dust from plantation forestry activities earthworks as this is regulated under regulations 100-101 of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017. Those regulations prevail over this rule in relation to the discharge of dust from plantation forestry earthworks.</i>

3.3.2.2 Option 2 - Include a reference to the NES-PF through a 'catch all' rule

A number of plans have recognised NES through a 'catch all' rule, designed to both alert users that a NES is in place and to clarify how to interpret plan rules when there is a duplication or conflict with the NES. An example of a 'catch all' rule for the NES-PF is as follows:

“Notwithstanding any other rules in this plan, all plantation forestry activities regulated under the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 must comply with those regulations. Where there is conflict or duplication between a rule in this plan and those regulations, the regulations prevail”.

The benefits of this option are that it is relatively efficient and makes it clear that the NES-PF overrides all existing plan provisions that conflict or duplicate. However, this option will not fully meet the requirements of section 44A of the RMA where the plan has forestry specific rules as this requires duplication or conflict with a NES to be removed. Retaining conflicting or duplicating forestry specific provisions in the plan in addition to a 'catch all' rule could create uncertainty for plan implementers and users, especially if the catch all rule is not located in an obvious place so that it is clear the NES-PF prevails where there is potential conflict. This option also provides less certainty on where the NES-PF prevails over general rules in the plan.

Therefore, this option should generally only be used as:

1. An additional measure to avoid any doubt that *plantation forestry activities* must comply with the NES-PF and that the NES-PF prevails over plan rules when there is conflict.
2. An interim option when a council has not yet gone through the process of identifying and removing all rules that duplicate or conflict with the NES-PF. An advisory note could also be added to the plan noting that there may be duplication or conflict with the NES-PF at this point of time, but that council will address these areas within a set timeframe.

4 WHERE PLAN RULES MAY BE MORE STRINGENT THAN THE NES-PF

4.1 OVERVIEW OF REGULATION 6 AND SECTION 43B(2) OF THE RMA

Plan rules that are more stringent than a NES may only prevail over a NES where it expressly states that the rule may be more stringent (section 43B(1) of the RMA)¹⁰. A plan rule is more stringent than a NES if it prohibits or restricts an activity that the NES permits or authorises (section 43B(2)). The RMA requires councils to demonstrate why a proposed rule needs to be more stringent than a NES in the context of each region or district through their section 32 evaluation. Section 32(4) states, in relation to new rules:

“If the proposal will impose a greater or lesser prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect”.

When new rules are being introduced in a regional or district plan, the section 32 evaluation therefore needs to specifically consider whether a rule needs to be more stringent than the NES-PF. If a council considers that a more stringent rule than the NES-PF is justified, this should be clearly documented in the section 32 evaluation report.

It is also good practice to carefully assess existing rules that are more stringent than the NES-PF to ensure that each rule is clearly within the circumstances prescribed in Regulation 6. This is important to meet the requirements in section 43B and 44A of the RMA (i.e. that a rule can only be more stringent than NES when the NES expressly states this). It is also important to ensure that more stringent rules only prevail over the NES-PF in appropriate circumstances to ensure the underlying policy objectives of the NES-PF to achieve consistency and certainty in the management of *plantation forestry activities* are not compromised.

The provisions in the NES-PF are generally expected to be sufficient to manage the adverse environmental effects of *plantation forestry activities* without the need for any additional local control. However, there will be certain circumstances when local control needs to be retained to manage locally significant or sensitive areas or to give effect to other national direction. As such, Regulation 6 of the NES-PF outlines seven specific circumstances where plan rules may be more stringent:

National instruments:

1. Rules that give effect to an objective developed to give effect to the National Policy Statement for Freshwater Management (NPSFM); and
2. Rules that give effect to any of policies 11, 13, 15 and 22 of the New Zealand Coastal Policy Statement 2010 (NZCPS).

Matters of national importance:

3. Rules that recognise and provide for protection of *outstanding natural features and landscapes* from inappropriate use and development; and
4. Rules that recognise and provide for the protection of *significant natural areas*.

Unique and sensitive environments:

5. Rules that manage activities in *green, yellow or orange zone* containing Separation Point granite soils;

¹⁰ Note that there is also some Treaty Settlement legislation in the Waikato (section 12(4) of the Waikato-Tainui Raupatu Claims Settlement Act 2010) that allows plan rules to prevail over NES for the purposes of giving effect to the vision and strategy for the Waikato River. This is discussed in more detail in the other legislation section of the NES-PF User Guide.

6. Rules that manage activities in *geothermal areas* or *karst geology*; and
7. Rules that manage activities upstream from sources of human drinking water supply and that manage forestry quarrying activities over aquifers used for human drinking water supply.

A more stringent plan rule is not limited to rules with a more stringent activity status – it also includes rules with more stringent conditions. Examples of more stringent plan rules include:

- A plan rule that requires a resource consent for a *plantation forestry activity* that is permitted under the NES-PF
- A plan rule that has a more stringent activity status (e.g. discretionary activity) for a *plantation forestry activity* compared to the activity status under the NES-PF (e.g. controlled activity)
- A plan rule that includes more stringent permitted activity conditions for a *plantation forestry activity* than the conditions for the same permitted activity under the NES-PF (e.g. more stringent *setback* requirements)¹¹.

4.2 MORE STRINGENT RULES – TIPS TO PROVIDE CLARITY TO USERS AND IMPLEMENTERS

It is important that users of the NES-PF can identify where a more stringent plan rule prevails over the NES-PF in accordance with Regulation 6. All councils are required to:

- Demonstrate why proposed rules more stringent than the NES-PF are justified in the circumstances of the region or district (section 32(4))
- Identify rules that conflict and remove that conflict (section 44A). An assessment of when a rule conflicts will generally require an assessment of whether a more stringent plan rule meets the requirements of Regulation 6 - if not then the plan rule conflicts.

In addition to these statutory obligations, it is good practice for councils to provide certainty to plan implementers and users about the circumstances in which a plan rule is more stringent than the NES-PF. Certainty can be achieved by:

- Including a reference next to the relevant plan rule making it clear that the rule prevails over the NES-PF in accordance Regulation 6. Such references can be included in plans without using the Schedule 1 process under section 44A(6). This should also reference the regulations or subparts of the NES-PF that the more stringent rule prevails over where applicable. For example, the earthworks regulations (22-35) could be referred to where an *earthworks* rule is more stringent under Regulation 6.
- Identifying in a publicly available document (e.g. as a link on the council's plan webpage) where a plan rule meets the requirements of Regulation 6 and prevails over the regulations.
- Providing information (e.g. a fact sheet) and advice to foresters about where plan rules still apply to their operations.

A combination of these approaches is likely to be the most effective way to ensure that foresters are aware of when they need to also comply with plan rules, and that they should not rely solely on the NES-PF. In addition to providing certainty, this is also likely to assist in achieving compliance.

It is equally important that those implementing the plan (i.e. council consenting and compliance staff) are clear about where a more stringent plan rule prevails over the NES-PF. This will require some internal discussion between council policy and consenting staff prior to the NES-PF coming into force to ensure the consistent and correct implementation of the NES-PF.

It is expected that, in most cases, it will be clear when a rule prevails over the NES-PF in accordance with Regulation 6, particularly where councils follow the steps outlined in this guidance. Councils should also generally have a clear understanding of the purpose of the

¹¹ The assessment of whether different permitted activity conditions are more/less stringent will need to be carefully considered based on the nature of the conditions and the requirement imposed, not simply the number of conditions.

relevant rule and whether it meets the requirements of Regulation 6. However, there may be situations where there is uncertainty or differences in opinion about whether a rule meets the requirements of Regulation 6 and prevails over the NES-PF. In these situations, open communication and discussion between councils and forestry operators is the best means to clarify where a plan rules meet the requirements of Regulation 6. Clearly documenting the plan alignment process and the how the relevant legal relationships have been applied will also help to avoid potential uncertainty and debate during the early stages of the NES-PF being in force.

4.3 REGULATION 6(1)(A) - PLAN RULES THAT GIVE EFFECT TO THE NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT

4.3.1 OVERVIEW

Regulation 6(1)(a) states that a plan rule may be more stringent than the NES-PF if it gives effect to:

“an objective developed to give effect to the National Policy Statement for Freshwater Management”

The NPSFM was introduced in 2011 and substantially amended in 2014 and 2017. The definition of the NPSFM in the NES-PF includes the amendments made to date, and any changes that have legal effect when a future edition of the NPSFM is being used.

The provisions in the NES-PF are generally expected to be sufficient to give effect to the NPSFM. The NES-PF includes a range of provisions to manage sediment (e.g. minimum setbacks to waterbodies, requirements to install *sediment control measures*, management plan requirements)¹² to maintain or improve water quality – a key objective in the NPSFM. The NES-PF also includes water quality parameters for sediment discharges in receiving waterbodies which are consistent with section 70 of the RMA, and requirements to manage slash to avoid adverse effects on receiving waterbodies.

However, under certain circumstances councils and their communities may go through the process of giving effect to the NPSFM and determine that more stringent rules are required to achieve an objective in their region relating to freshwater that gives effect to the NPSFM. This is most likely to relate to Objective A1 or Objective A2 of the NPSFM.

Giving effect to the NPSFM

A key component of giving effect to the NPSFM is the National Objectives Framework in Part CA of the NPSFM. This framework sets out the steps for regional councils to identify Freshwater Management Units (FMUs)¹³ and develop freshwater objectives. Broadly, Part CA requires regional councils (and unitary authorities) to:

- Identify FMUs that include all freshwater bodies in the region (Policy CA1);
- Identify values for each FMU, including the compulsory national values, and other values that the council considers appropriate (Policy CA2(b)); and
- Establish freshwater objectives which may be expressed in numeric or narrative terms (Policy CA2(e)).

Policy A1 then requires regional councils to:

- Set freshwater quality limits for all FMUs in their region; and

¹² For more detail, refer to the NES-PF section 32 evaluation.

¹³ Defined in the current NPSFM as “**Freshwater management unit**” is the water body, multiple water bodies or any part of a water body determined by the regional council as the appropriate spatial scale for setting freshwater objectives and limits and for freshwater accounting and management purposes”.

- Establish methods to avoid over-allocation (a situation where a waterbody “has been allocated to users beyond limits” or “used to a point where a freshwater objective is no longer being met”).

Giving effect to the NPSFM will generally involve a combination of region-wide and FMU/catchment specific objectives, policies and rules. For example, achieving Objective A1 of the NPSFM, which relates to the life-supporting capacity of freshwater and ecosystem health, will require a holistic approach and generally a combination of region-wide and FMU/catchment specific provisions.

Regulation 6(1)(a) therefore refers to ‘an objective’ that gives effect to the NPSFM and it not intended to be limited to a ‘freshwater objective’¹⁴ in regional plans as defined in the NPSFM. Rather the policy intent is that regional plan objectives (region-wide and FMU/catchment specific), and rules that give effect to the NPSFM can be more stringent than the NES-PF under Regulation 6(1)(a). This applies to existing provisions (objectives and rules) in plans that give effect to the NPSFM and proposed rules to give effect to the NPSFM (provided the requirements in section 32(4) of the RMA are met).

This recognises that many councils are implementing the NPSFM via a staged approach with region-wide provisions being developed in advance of more detailed FMU/catchment specific provisions. For example, there are a number of freshwater objectives in the Gisborne Freshwater Plan (notified August 2015) that relate to the region as a whole and were developed to give effect to the NPSFM that would qualify as objectives under Regulation 6(1)(a).

Plan rules that meet the requirements of Regulation 6(1)(a)

In order for a more stringent plan rule to meet the requirements under Regulation 6(1)(a), there needs to be a clear link between:

1. How a more stringent rule that applies to *plantation forestry activities* gives effect to (implements) a particular objective in the plan; and
2. How that particular objective in the plan gives effect to the NPSFM.

It is important that councils make this link clear to:

1. Demonstrate that the rule meets the requirements of Regulation 6(1)(a); and
2. Provide certainty to plan users and implementers.

It is also good practice to clearly document the link between a more stringent plan rule and Regulation 6(1)(a) and make this available to plan implementers and foresters. This will help to avoid debates about why more stringent rules have been applied under Regulation 6(1)(a) and ensure consistent implementation of the NES-PF.

4.4 REGULATION 6(1)(A) – PLAN RULES THAT GIVE EFFECT TO NEW ZEALAND COASTAL POLICY STATEMENT 2010

4.4.1 OVERVIEW

Regulation 6(1)(b) states that a plan rule may be more stringent than the NES-PF if it gives effect to:

“any of policies 11, 13, 15 and 22 of the New Zealand Coastal Policy Statement 2010”

The NZCPS 2010 replaced the NZCPS 1994 and is the only mandatory national policy statement under the RMA. The purpose of the NZCPS is to state policies to achieve the purpose of the RMA, in order to promote the sustainable management of natural and physical resources in relation to New Zealand’s coastal environment (section 56). Local authorities must give effect to the NZCPS through their policy statements and plans.

¹⁴ Defined in the NPSFM as “an intended environmental outcome in a freshwater management unit”. This definition was amended in 2014 and there was no reference to FMU in the 2011 NPSFM definition.

The NZCPS policies in Regulation 6(1)(b) are specially referenced in the NES-PF as they are the most relevant to the potential environmental effects from *plantation forestry activities*. Broadly, these policies are focused on:

- **Policy 11: Indigenous biological diversity** – protecting indigenous biological diversity in the coastal environment by avoiding adverse effects on significant or threatened species, avoiding significant adverse effects on indigenous biological diversity in the coastal environment, and avoiding, remedying or mitigating other adverse effects on indigenous vegetation and habitats in the coastal environment.
- **Policy 13: Preservation of natural character** – preserving the natural character of the coastal environment and protecting it from inappropriate subdivision, use and development, including identifying areas where preserving natural character requires rules.
- **Policy 15: Natural features and natural landscapes** – protecting natural features and landscapes in the coastal environment from inappropriate subdivision, use and development, including identifying areas where protection of natural features and landscapes requires rules.
- **Policy 22: Sedimentation** – assessing and monitoring sediment levels and impacts on the coastal environment, requiring that the use and development of land does not result in a significant increase in sedimentation in the coastal marine area or other coastal water, and controlling the impacts of vegetation removal on sedimentation, including the impacts of harvesting plantation forestry.

Refer to [Appendix B](#) for the exact wording of these policies.

4.4.2 EXAMPLES

As with the NPSFM, in order for a plan rule to prevail over the NES-PF under Regulation 6(1)(b) there needs to be a clear link between a plan rule and these NZCPS policies. This should generally be obvious from the supporting objectives and policies in the plan, the section 32 evaluation, and associated background/hearing reports.

Table 6 below provides examples of plan rules that give effect to certain NZCPS policies and may be more stringent than the NES-PF under Regulation 6(1)(b). These examples are correct at the time of publication and are intended to provide additional context and guidance. However, each council will need to determine how the rules in their plan relate to Regulation 6(1)(b) and the NES-PF provisions.

Note that there is some overlap between Regulation 6(1)(b) and Regulation 6(2)(a) as they both relate to outstanding natural features and landscapes – the difference being Regulation (6)(1)(b) is limited to *outstanding natural features and landscapes* in the coastal environment. Examples of plan rules to protect *outstanding natural features and landscapes* are provided in section 4.5.2 below.

Table 6: Examples of plan rules that give effect to the NZCPS.

Plan	Example
<p><i>Thames Coromandel District Plan (Appeals Version, 2017)</i></p>	<p>The District Plan includes coastal areas of High Natural Character (HNC) and Outstanding Natural Character (ONC) in the coastal environment. These areas are shown spatially on the district plan maps and the associated plan provisions are intended to give effect to the NZCPS, including Policy 13. The plan includes more stringent rules to manage afforestation in these overlays as follows:¹⁵</p> <ul style="list-style-type: none"> • “Afforestation in an area of HNC in the coastal environment is a restricted discretionary activity provided the trees are not pinus species, are not planted in lines and the forest canopy is maintained at one or more levels without clear

¹⁵ All rules discussed in this section are found in Section 32A – Natural Character of the Coastal Environment, Thames Coromandel District Plan (Appeals Version, 2017), more specifically Rules 3, 7, 14 and 21

Plan	Example
	<p>falling. Where these conditions are not met, <i>afforestation</i> is a non-complying activity.”</p> <p>This district plan rule would prevail over the NES-PF because it:</p> <ul style="list-style-type: none"> – Gives effect to Policy 13 of the NZCPS; and – Is more stringent than the NES-PF as the NES-PF does not restrict <i>afforestation</i> in areas of high natural character. <ul style="list-style-type: none"> • “<i>Afforestation</i> in an area of ONC in the coastal environment is a prohibited activity.” <p>This district plan rule would prevail over the NES-PF because it:</p> <ul style="list-style-type: none"> – Gives effect to Policy 13 of the NZCPS; and – Is more stringent than the NES-PF as the NES-PF does not restrict <i>afforestation</i> in areas of high natural character.
<p><i>Auckland Unitary Plan (Operative in Part, 2017)</i></p>	<p>The Unitary Plan has specific rules to manage sedimentation from <i>earthworks</i> associated with <i>plantation forestry activities</i>¹⁶. These rules exempt forestry activities from having to comply with the general <i>earthworks</i> rules. More specifically the rules do not require a specific setback from the coastal marine area, instead “<i>ancillary forestry earthworks must not take place on land within a coastal foredune</i>”. This rule gives effect to Policy 22 of the NZCPS which relates to sedimentation in the coastal environment.</p> <p>Regulation 29(2) of the NES-PF prevents <i>earthworks</i> occurring within 30 metres of a coastal marine area. In most cases coastal foredunes will be located closer than 30 metres to the coastal marine area. Under this scenario, the NES-PF regulation is more stringent and would prevail over the Unitary Plan. If <i>earthworks</i> were proposed on a coastal foredune that was further away from the coastal marine area than 30 metres, the Unitary Plan rule would be more stringent and would prevail over the NES-PF.</p>
<p><i>Hurunui District Plan (Decisions Version, 2016)</i></p>	<p>This District Plan has identified the Coastal Environment as a separate overlay which is shown spatially on the planning maps. Although there are also identified areas of Outstanding Natural Features/Character that are located in the Coastal Environment, the primary purpose of the Coastal Environment overlay is to give effect to Policy 13 of the NZCPS by focusing on the natural character of the coast (which does not necessarily have to be classified as ‘outstanding’¹⁷).</p> <p>In the Coastal Environment overlay (excluding Outstanding Natural Features/Character), the following activities are permitted¹⁸:</p> <ul style="list-style-type: none"> • Establishment of new forestry (i.e. <i>afforestation</i>) of up to 1 ha in area, or no more than 2.5% of site area, whichever is the greater, in any 10-year period. New forestry that cannot meet the permitted standard is either controlled, restricted discretionary or non-complying depending on how far over the permitted threshold the proposed planting area is. These permitted activity conditions limiting the size of new forestry are more restrictive than the conditions for <i>afforestation</i> in the NES-PF and give effect to Policy 13 of the NZCPS. As such, this rule would prevail over the NES-PF. • <i>Earthworks</i> for maintenance, repair or replacement of existing fence lines, vehicle tracks, roads, firebreaks, drains, waterlines, ponds, dams, waterway crossings, or utilities, of the same or similar scale. This rule is more stringent than the <i>earthworks</i> conditions in the NES-PF as it limits <i>earthworks</i> to being for maintenance, repair or replacement works only and does not provide for

¹⁶ Rule E.12.6.4 of the Auckland Unitary Plan (Operative in Part, 2017)

¹⁷ Section 12.1 – Introduction of the Hurunui District Plan (Decisions Version, 2016)

¹⁸ Rule 12.4.2 of the Hurunui District Plan (Decisions Version, 2016)

Plan	Example
	<p>upgrades or expansions of <i>forestry roads/tracks</i> or <i>river crossings</i>. <i>Earthworks</i> for upgrades, expansions, or new roads, tracks or <i>river crossings</i> would require consent as a restricted discretionary activity. This is more stringent than the NES-PF as all <i>earthworks</i> associated with <i>plantation forestry activities</i> are permitted in a territorial authority jurisdiction under Regulation 23. As this rule is giving effect to Policy 13 of the NZCPS, it would prevail over the NES-PF.</p> <ul style="list-style-type: none"> Any new forestry within 100 metres horizontally of Mean High Water Springs is a non-complying activity¹⁹. This activity rule restricting the location of new forestry in relation to the coast is more restrictive than the Coastal Marine Area setback requirements for <i>afforestation</i> in the NES-PF. Regulation 14(3)(c) requires that <i>afforestation</i> is set back 30 metres from the CMA (Coastal Marine Area). As this rule gives effect to Policy 13 of the NZCPS and is more stringent than the regulations, this rule would prevail over the NES-PF.

4.5 REGULATION 6(2)(A) – PLAN RULES THAT RECOGNISE AND PROVIDE FOR OUTSTANDING NATURAL FEATURES AND LANDSCAPES

4.5.1 OVERVIEW

Regulation 6(2)(a) of the NES-PF states that a plan rule may be more stringent than the NES-PF if the rule recognises and provides for the protection of:

“outstanding natural features and landscapes from inappropriate use and development”

Regulation 6(2)(a) allows councils to meet their obligations under section 6(b) of the RMA, which states that councils must recognise and provide for the protection of *outstanding natural features and landscapes* as a matter of national importance. It also recognises that *plantation forestry activities* can have adverse effects on these natural features and landscapes depending on their particular values and sensitivities.

An important qualifier in the context of Regulation 6(2)(a) is the protection of *outstanding natural features and landscapes “from inappropriate use and development”* which reflects the words of section 6(b) of the RMA. Rules relating to *outstanding natural features and landscapes* generally focus on protecting the feature or landscape from inappropriate use and development and this may include rules restricting *plantation forestry activities*. In other cases, there may be no rules restricting *plantation forestry activities* within the *outstanding natural features and landscapes*. In these situations, Regulation 6(2)(a) does not apply and the NES-PF provisions prevail.

The definition of *outstanding natural features and landscapes* in Regulation 3 is as follows:

“outstanding natural features and landscapes means natural landscapes and features that -

- (a) are identified in a regional policy statement, regional plan, or district plan as outstanding, however described; and*
- (b) are identified in the policy statement or plan by their location, including by a map, a schedule, or a description of the area”*

The phrase ‘however described’ in sub-clause (a) makes it clear that the features and landscapes do not need to be identified using the exact words ‘*outstanding natural features and landscapes*’ to meet this definition, although this will generally be the case. Sub-clause (b) sets out how *outstanding natural features and landscapes* must be identified in policy statements and plans to meet this definition. *Outstanding natural features and landscapes* are generally well defined in RMA plans through overlays on planning maps and sometimes through schedules. The supporting objectives, policies and rules in the plan then provide direction on what is considered

¹⁹ Rules 12.4.4, 12.4.6 and 12.4.7 of the Hurunui District Plan (Decisions Version, 2016)

to be inappropriate development and use within the *outstanding natural features and landscapes* in that particular context.

4.5.2 EXAMPLES

Table 7 provides examples of plan rules that protect *outstanding natural features and landscapes* identified in plans which may be more stringent than the NES-PF under Regulation 6(2)(a). These areas are all identified through mapping consistent with the definition of *outstanding natural features and landscapes* in Regulation 3. These examples are correct at the time of publication and each council will need to determine how the rules in their plan relate to Regulation 6(2)(a) and the NES-PF provisions.

Table 7: Examples of plan rules that relate to the protection of outstanding natural features and landscapes.

Plan	Example
<p><i>Far North District Plan (Operative, 2009)</i></p>	<p>The District Plan includes Outstanding Landscapes, Outstanding Landscape Features and Outstanding Natural Features. As well as being mapped spatially, these landscapes and features are also listed in Appendix 1A and 1B of the Plan. Resource consent is required for the following activities:</p> <ul style="list-style-type: none"> • Tree planting over 50 trees of a single species in any Outstanding Landscape Feature requires consent as a discretionary activity²⁰. This is a more stringent activity status than the NES-PF as <i>afforestation</i> in an <i>outstanding natural features and landscapes</i> is a restricted discretionary activity under Regulation 12; • Any excavation and/or filling in an Outstanding Landscape Feature requires consent as a discretionary activity²¹. This is more stringent than the NES-PF as all <i>plantation forestry earthworks</i> are a permitted activity in relation to territorial authority functions (Regulation 23). <i>Earthworks</i> are also a permitted activity in relation to regional council functions provided conditions are complied with and the <i>earthworks</i> are not located in higher risk <i>Erosion Susceptibility Classification (ESC)</i> land; • <i>Afforestation</i> over 4ha in a Rural Environment Zone, over 2ha in a Coastal Environment Zone, or in any other zone in an Outstanding Landscape requires resource consent for a discretionary activity²². This is more stringent than the NES-PF as there are no restrictions on the maximum area of <i>afforestation</i> in the <i>afforestation</i> regulations; and • Excavation/filling over 300m³ in any 12-month period or with a cut and/or filled face of more than 1.5 metres in an Outstanding Landscape²³ requires resource consent for a discretionary activity. This is more stringent than the NES-PF as all <i>plantation forestry earthworks</i> are a permitted activity in relation to territorial authority functions (Regulation 23). <i>Earthworks</i> are also a permitted activity in relation to regional council functions provided conditions are complied with and the <i>earthworks</i> are not located in higher risk <i>ESC</i> land.
<p><i>Taupo District Plan (Operative, 2007)</i></p>	<p>The District Plan includes Outstanding Landscape Areas which are identified through maps and schedules in the Plan. In the Rural Environment, <i>earthworks</i> within an Outstanding Landscape Area that create a new cut face or fill that is in excess of 1.5 metres in height, or cumulative vertical ground alteration in excess of 3 metres over a 12-month period require resource consent as a restricted discretionary activity²⁴.</p>

²⁰ Rule 12.1.6.1.1 of the Far North District Plan (Operative, 2009)

²¹ Ibid.

²² Rule 12.1.6.1.3 of the Far North District Plan (Operative, 2009)

²³ Rule 12.1.6.1.4 of the Far North District Plan (Operative, 2009)

²⁴ Rule 4b.2.8 of the Taupo District Plan (Operative, 2007)

Plan	Example
	<p>The NES-PF does not control cut or fill face height or vertical ground alteration in green or yellow zones and is more permissive with side cutting heights in orange and red zones.</p> <p>These rules would prevail over the NES-PF as:</p> <ul style="list-style-type: none"> • They are more stringent than the NES-PF; and • They recognise and provide for the protection of Outstanding Landscape Areas.
<p><i>Hurunui District Plan (Decisions Version, 2016)</i></p>	<p>The District Plan includes <i>outstanding natural features and landscapes</i> which are identified in the plans through mapping. In these areas the following activities are permitted²⁵:</p> <ul style="list-style-type: none"> • Establishment of new forestry (i.e. <i>afforestation</i>) of up to 1 ha in area, or no more than 2.5% of site area, whichever is the greater, in any 10-year period. New forestry that cannot meet the permitted standard is a non-complying activity²⁶ • <i>Earthworks</i> for maintenance, repair or replacement of existing fence lines, vehicle tracks, roads, firebreaks, drains, waterlines, ponds, dams, waterway crossings, or utilities, of the same or similar scale. This rule is more stringent than the <i>earthworks</i> conditions in the NES-PF as it restricts <i>earthworks</i> to maintenance, repair or replacement works only. The District Plan permitted activity rule does not provide for earthworks for new <i>forestry roads/tracks</i> or upgrades of existing <i>forestry roads/tracks</i> and these activities require consent as a restricted discretionary activity under the District Plan²⁷. This is more stringent than the NES-PF as all <i>earthworks</i> associated with <i>plantation forestry activities</i> are permitted in relation to territorial authority functions (Regulation 23). <i>Earthworks</i> are also a permitted activity in relation to regional council functions provided conditions are complied with and the <i>earthworks</i> are not located in higher risk ESC land. <p>These rules would prevail over the NES-PF as:</p> <ul style="list-style-type: none"> • They are more stringent than the NES-PF; and • They recognise and provide for the protection of <i>outstanding natural features and landscapes</i>.
<p><i>Rotorua District Plan (Operative 2016)</i></p>	<p>The District Plan includes mapped and scheduled <i>outstanding natural features and landscapes</i> (found in Appendix 2 of the District Plan). Where overlays are also located in one of three rural zones, the following activities require resource consent:</p> <ul style="list-style-type: none"> • The construction of new <i>forestry tracks</i> requires resource consent as a restricted discretionary activity.²⁸ • <i>Plantation forestry</i> within the boundaries of an identified <i>outstanding natural features and landscapes</i> unless otherwise specified requires resource consent as a non-complying activity.²⁹ • <i>Earthworks</i> within an <i>outstanding natural features and landscapes</i> not provided for in Appendix 10 of the District Plan (exemptions which forestry <i>earthworks</i> do not meet any) requires resource consent as a discretionary activity.³⁰

²⁵ Rule 11.4.2 of the Hurunui District Plan (Decisions Version, 2016).

²⁶ Rule 11.4.7 of the Hurunui District Plan (Decisions Version, 2016).

²⁷ Rule 11.4.6 of the Hurunui District Plan (Decisions Version, 2016).

²⁸ Rule 9.5.89 of the Rotorua District Plan (Operative, 2016).

²⁹ Rule 9.5.96 of the Rotorua District Plan (Operative, 2016).

³⁰ Rule 9.5.92 of the Rotorua District Plan (Operative, 2016).

Plan	Example
	<ul style="list-style-type: none"> Quarrying where the land to be quarried adjoins the boundary of an <i>outstanding natural features and landscapes</i> requires resource consent as either a discretionary or non-complying activity depending on the underlying rural zone.³¹ <p>These rules place blanket restrictions on <i>forestry tracks, afforestation, earthworks and forestry quarrying</i> which are more stringent than under the NES-PF and they relate to the protection of <i>outstanding natural features and landscapes</i>. As such, these rules would prevail over the NES-PF.</p>

4.6 REGULATION 6(2)(B) – PLAN RULES THAT RECOGNISE AND PROVIDE FOR THE PROTECTION OF SIGNIFICANT NATURAL AREAS

4.6.1 OVERVIEW

Regulation 6(2)(b) of the NES-PF states that a plan rule may be more stringent than the NES-PF if the rule recognises and provides for the protection of:

“a significant natural area”

Regulation 6(2)(b) allows councils to meet their obligations under section 6(c) of the RMA, which states that councils must recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance. These areas are referred to as *significant natural areas* for the purposes of the NES-PF and are defined in Regulation 3 as follows:

“significant natural area means an area of significant indigenous vegetation or significant habitat of indigenous fauna that—

- (a) *is identified in a regional policy statement or a regional or district plan as significant, however described; and*
- (b) *is identified in the policy statement or plan, including by a map, a schedule, or a description of the area or by using significance criteria”*

The phrase ‘however described’ in sub-clause (a) of this definition is simply intended to make it clear that the exact words ‘significant natural area’ do not need to be used within the plan to meet this definition. Sub-clause (b) of the definition of *significant natural areas* sets out how these areas must be identified within plans in order for Regulation 6(2)(b) and other NES-PF regulations relating to *significant natural areas* to apply (e.g. Regulation 12). Four methods of identification are included within this definition – mapping, scheduling, a description of the area, and the use of significance criteria. The methods listed within this definition are based on current practice to identify *significant natural areas* in RMA plans.

The use of criteria to assess ecological significance under section 6(c) of the RMA is a common method. A variety of criteria have been developed for inclusion in plans, which may be open ended criteria, standards or a combination of factors to consider. Where plans rely on significance criteria with no form of spatial identification, this may introduce a degree of uncertainty for foresters as this requires them to make a site-specific assessment of the ecological significance of an area of indigenous vegetation and/or habitat of indigenous fauna. Some plans include detailed criteria which provide a clear description of the types of areas that may be significant whereas other plans use more general criteria.

Where a rule is more stringent under Regulation 6(2)(b) and the plan relies on significance criteria to identify *significant natural areas*, councils should consider how foresters will be able to apply the criteria under the NES-PF and how the council may assist foresters to understand the implications of the rule.

³¹ Rule 9.5.93 of the Rotorua District Plan (Operative, 2016).

4.6.2 EXAMPLES

Table 8 provides examples of plan rules that relate to the protection of *significant natural areas* and may be more stringent under Regulation 6(2)(b). These areas are identified in plans through mapping, scheduling and significance criteria consistent with the definition of *significant natural areas* in Regulation 3. These examples are correct at the time of publication, and each council will need to determine how the rules in their plan relate to Regulation 6(2)(b) and the NES-PF provisions.

Table 8: Examples of plan rules that protect significant natural areas.

Plan	Example
<p><i>Horizons One Plan (Operative, 2014)</i></p>	<p>The One Plan (combined regional policy statement and regional plan) includes criteria in Schedule F to determine areas of Indigenous Biological Diversity, which would be considered '<i>significant natural areas</i>' in accordance with the NES-PF definition. These areas are determined to be either "at-risk habitat", "threatened habitat" or "rare habitat". Forestry³² activities in relation to these "habitats" is managed as follows:</p> <ul style="list-style-type: none"> • Forestry can be a permitted activity provided it can achieve a 5 metre setback from any of the identified "habitats"³³. • Where forestry activities are located within 5 metres of a <i>significant natural area</i>, an Operational Plan, detailing measures taken to avoid or mitigate adverse effects on these areas, must be prepared and submitted to the Regional Council at least 48 hours prior to <i>harvesting</i> commencing. This plan must be complied with.³⁴ • If forestry cannot achieve the setback or effectively mitigate adverse effects through measures in an Operational Plan, resource consent is required as follows: <ul style="list-style-type: none"> ○ Forestry within an "at-risk habitat" requires resource consent as a discretionary activity; and ○ Forestry within a "rare habitat" or "threatened habitat" requires resource consent as a non-complying activity.³⁵ • This activity status is more stringent than Regulation 12 of the NES-PF where <i>afforestation</i> in a <i>significant natural area</i> requires consent as a restricted discretionary activity. As such, this plan rule would prevail over the NES-PF where forestry is proposed within or near to (less than 5 metres) <i>significant natural areas</i>.
<p><i>Mackenzie District Plan (Operative, 2004)</i></p>	<p>This District Plan includes mapped and scheduled Sites of Natural Significance (Appendix I) that would be considered a <i>significant natural area</i> under the NES-PF. In these areas, the following forestry activities in a Rural Zone require resource consent:</p> <ul style="list-style-type: none"> • <i>Earthworks</i> over 20m³ or 50m² per hectare in any continuous 5-year period or <i>earthworks</i> on slopes with an angle greater than 25 degrees requires consent as a discretionary activity³⁶. This is more stringent than the NES-PF as <i>earthworks</i> are a permitted activity in relation to territorial functions (Regulation 23). Tree planting is a non-complying activity³⁷. This is a more stringent activity status than Regulation 12 of the NES-PF where <i>afforestation</i> in a <i>significant natural area</i> is a restricted discretionary activity. <p>These more stringent rules would prevail over the NES-PF as they relate to the protection of <i>significant natural areas</i>.</p>

³² Including tracking, earthworks, land preparation, planting, pruning, thinning, clearing understorey (indigenous and exotic species), and harvesting.

³³ Rule 13-3 b.(iii) of the Horizons One Plan (Operative, 2014).

³⁴ Rule 13-3 e. of the Horizons One Plan (Operative, 2014).

³⁵ Rules 13-8 and 13-9 of the Horizons One Plan (Operative, 2014).

³⁶ Rules 4.1.1.a and 4.3.1 in Chapter 7 of the Mackenzie District Plan (Operative, 2004).

³⁷ Rules 6.1.8.d and 6.5.1 in Chapter 7 of the Mackenzie District Plan (Operative, 2004).

Plan	Example
<i>Waimate District Plan (Operative, 2014)</i>	The District Plan includes mapped and scheduled Significant Natural Areas and Features (Appendix G). In these overlays where the underlying zone is Rural, any <i>earthworks</i> (excluding listed maintenance activities), indigenous <i>vegetation clearance</i> , or tree planting requires resource consent as a non-complying activity ³⁸ . These rules are all more stringent than the NES-PF and they relate to the protection of <i>significant natural areas</i> . As such, these rules would prevail over the NES-PF.

4.7 REGULATION 6(3)(A) – PLAN RULES THAT MANAGE ACTIVITIES IN SEPARATION POINT GRANITE SOILS

4.7.1 OVERVIEW

Regulation 6(3)(a) states that a rule in plan may be more stringent than the NES-PF if the rule manages:

“activities in any green, yellow, or orange zone containing Separation Point granite soil areas that are identified in a regional policy statement, regional plan, or district plan”

The Separation Point granites are limited to Tasman District and do not need to be considered for *plantation forestry activities* in the rest of New Zealand. The soils are a strip of granitic bedrock about 10 kilometres wide that extends for over 100 kilometres from the Abel Tasman National Park in the north to Mt Murchison in the south.

Regulation 6(3)(a) recognises that these soils are particularly prone to erosion and are especially vulnerable during land disturbance and vegetation removal. These soils have been mapped in the Tasman Resource Management Plan and the plan contains rules restricting land disturbance and vegetation removal in these soils.

4.7.2 EXAMPLE

Table 9 provides examples of a plan rule that manages activities within Separation Point granite soils that may be more stringent than the NES-PF under Regulation 6(3)(b). This Regulation is only relevant to Tasman District Council at the time of publication and Tasman District Council staff will need to determine how the rules in their plan relate to Regulation 6(3)(a) and the NES-PF provisions.

Table 9: Examples of plan rules relating to activities in Separation Point granite soils.

Plan	Example
<i>Tasman Resource Management Plan (Operative, 2015)</i>	<p>This Resource Management Plan has specifically identified an area of Separation Point granite soils that are particularly prone to erosion and especially vulnerable during land disturbance and vegetation removal. These are identified spatially on the planning maps as ‘<i>Land Disturbance Area 2</i>’ overlays.</p> <p>The rules that apply to Land Disturbance Area 2³⁹ cover a range of forestry activities, including <i>earthworks</i>, indigenous and non-indigenous <i>vegetation clearance</i>, discharges, disturbances, diversions, <i>afforestation</i> (described as cultivation in the Plan) and quarrying. Where the Resource Management Plan contains permitted activity conditions that are not in the NES-PF and/or are more stringent than the NES-PF conditions, these conditions will prevail over the NES-PF. For example:</p> <ul style="list-style-type: none"> Permitted activity conditions (b) and (c) – there are eight scenarios listed under these two conditions. Vegetation destruction or removal, soil disturbance or <i>earthworks</i> can only be permitted if they fit one of the following scenarios That is, removal of vegetation by hand clearance, chemical removal, or fire; or <i>earthworks</i> for a road/track provided any batter/cut has an average vertical height or depth of less

³⁸ Rules 6.1 and 8.1.1 in Section 4 Rural of the Waimate District Plan (Operative, 2014)

³⁹ Rule 18.5.3(b) to (r) of the Tasman Resource Management Plan (Operative, 2015)

Plan	Example
	<p>than 0.5 metres. This is more stringent than the NES-PF as the scenarios restrict <i>vegetation clearance</i> and <i>earthworks</i> to more limited circumstances than the NES-PF.</p> <ul style="list-style-type: none"> • Permitted activity condition (f) – requires that cultivation (i.e. <i>afforestation</i>) is carried out predominantly on the contour. This would be an additional requirement to the NES-PF afforestation rules and is therefore more stringent. • Permitted activity condition (j) – restricts the removal of <i>indigenous vegetation</i> within 15m of any lake or river/stream with an average bed width of more than 3 metres. This is a more stringent approach than the <i>indigenous vegetation clearance</i> conditions in the NES-PF. • Permitted activity condition (m) – restricts the volume of land disturbed from quarrying to less than 50m³ in any 12-month period.

4.8 REGULATION 6(3)(B) – PLAN RULES THAT MANAGE ACTIVITIES IN GEOTHERMAL AREAS OR ANY KARST GEOLOGY

4.8.1 OVERVIEW

Regulation 6(3)(b) states that a rule in plan may be more stringent than the NES-PF if the rule manages:

“activities in any geothermal area or any karst geology that are identified in a regional policy statement, regional plan, or district plan”

Regulation 6(4) states how these areas and geologies must be identified in policy statements and plans in order for Regulation 6(3)(b) to apply as follows:

The areas and geology referred to in subclause (3)(b)—

- (a) may be identified in a policy statement or plan by any form of description; and*
- (b) include only areas and geology where the location is identified in the policy statement or plan by a map, a schedule, or a description of the area or geology.*

Regulation 6(5) defines geothermal area and karst geology as follows:

geothermal area means an area that has surface expressions of geothermal processes or discharges, including steam-fed features and geothermal water-fed features

karst geology means a naturally occurring landform that is formed by the dissolution by fresh water of rock containing calcium carbonate, calcium-magnesium carbonate, or magnesium carbonate (such as limestone, marble, dolomite, or magnesite), and having 1 or more of the following features:

- (a) sinkholes*
- (b) fissured or fluted rock outcrops*
- (c) areas of discontinuous surface drainage that includes stream sinks or resurgence*
- (d) underground caves.*

Some regions (e.g. Waikato and Bay of Plenty) have *geothermal areas* that need careful land management to prevent them from being damaged or destroyed. Regulation 6(3)(b) recognises that these areas need to be carefully managed at the local level by allowing more stringent geothermal area plan provisions to prevail over the NES-PF provisions.

Forestry operations may also affect or be affected by karst land forms, and the NES-PF enables plan rules to continue to manage these geologies where they are identified in plans and policy statements and there are rules managing *plantation forestry activities* within these areas.

4.8.2 EXAMPLES

Table 10 provides examples of plan rules relating to activities in *geothermal areas* and *karst geology* that may be more stringent than the NES-PF under Regulation 6(3)(b). These are correct at the time of publication, and each council will need to determine how the rules in their plan relate to Regulation 6(3)(b) and the NES-PF.

Note that some councils manage karst features in their region/district by identifying them as Outstanding Natural Features (e.g. Buller District Council and Whangarei District Council). This is an overlap with Regulation 6(2)(a) which relates to protection of *outstanding natural feature and landscapes*. However, the effect is the same, as Regulation 6 allows more stringent rules to prevail provided they meet the specific requirements of each sub-clause.

Table 10: Examples of plan rules relating to activities in *geothermal areas* and *karst geology*.

Plan	Example
<p><i>Waitomo District Plan (Operative, 2009)</i></p>	<p>This District Plan has identified karst features on the planning maps as an overlay as well as listing protected karst features in Appendix 6. A range of <i>plantation forestry activities</i> are managed in these areas as follows:⁴⁰</p> <ul style="list-style-type: none"> • <i>Quarrying</i> is either a discretionary or a non-complying activity within a karst features overlay (depending on which category of cave system is affected); • The clearance of more than 0.5ha of <i>indigenous vegetation</i> in one calendar year is a non-complying activity for category A and B caves; and • Any clearance of vegetation or <i>earthworks</i> or fill placement within 50 metres upslope of an entry or opening into any cave or associated karst formation is a restricted discretionary activity. <p>These rules are more stringent than the NES-PF and are intended to protect <i>karst features</i> identified in the plan. As such, these rules would prevail over the NES-PF.</p>
<p><i>Waikato Regional Plan (Operative, 2012)</i></p>	<p>This Regional Plan has identified and spatially mapped Significant Geothermal Features throughout the region. Under Rule 7.6.6.3 any of the following activities require resource consent for a discretionary activity:</p> <ul style="list-style-type: none"> • “<i>Vegetation clearance</i> or soil disturbance, in or within 20 metres of a Significant Geothermal Feature; or • Discharge of contaminants into or onto land in or within 20 metres of a Significant Geothermal Feature, except for discharges that are regulated by other rules in this Module; or • Damming or diversion of geothermal water that affects a Significant Geothermal Feature; or • Activity specified in s13(1) of the RMA [i.e. using the beds of lakes or rivers] carried out in, on, over or under that portion of the bed of a water body which is a Significant Geothermal Feature.” <p>These rules are more stringent than the NES-PF and manage activities within identified <i>geothermal areas</i>. As such, these rules would prevail over the NES-PF.</p>
<p><i>Rotorua District Plan (Operative, 2016)</i></p>	<p>This District Plan has identified and spatially mapped Significant Geothermal Features throughout the district. Several land use activities associated with <i>plantation forestry activities</i> are managed if they are in close proximity to geothermal features as follows⁴¹:</p> <ul style="list-style-type: none"> • Development (would include <i>plantation forestry activities</i> such as <i>afforestation</i> or replanting); • <i>Earthworks</i>; and

⁴⁰ All rules discussed in this section are found under Rule 11.5.2 of the Waitomo District Plan (Operative, 2009).

⁴¹ Example rules are taken from Chapter 9 – Rural of the Rotorua District Plan (Operative 2016) although they also apply in other zones where geothermal features are located. Relevant rules in Chapter 9 – Rural are found in Table 9.5 and are Rules 67-71 and the performance standards in Appendix 9.

Plan	Example
	<ul style="list-style-type: none"> • Maintenance of <i>forestry tracks</i>. <p>These activities have the potential to be permitted, provided they meet the relevant performance standards in Appendix 9, otherwise consent will be required for a discretionary activity⁴². Performance standards include (but are not limited to)⁴³:</p> <ul style="list-style-type: none"> • <i>Plantation forestry activities</i> shall be set back at least 5 metres from the edge of any Significant Geothermal Feature, unless resource consent has been granted by a regional council for the existence of the activity; • <i>Earthworks</i> shall be set back at least 5 metres from the edge of any Significant Geothermal Feature; • <i>Earthworks</i> shall not divert water into or out of a Significant Geothermal Feature; and • The maintenance of existing tracks can only be permitted if the track width does not increase, construction debris does not enter a waterbody and water is not diverted into or out of a Significant Geothermal Feature. <p>These rules and performance standards are more stringent as they manage activities within identified <i>geothermal areas</i>. As such, these rules would prevail over the NES-PF.</p>

4.9 REGULATIONS 6(3)(C) AND (D) – PLAN RULES THAN MANAGE ACTIVITIES NEAR SOURCES OF HUMAN DRINKING WATER

4.9.1 OVERVIEW

Regulations 6(3)(c) and (d) state that a rule in a plan may be more stringent than the NES-PF if the rule manages:

“(c) activities conducted within 1 km upstream of the abstraction point of a drinking water supply for more than 25 people where the water take is from a water body:

(d) forestry quarrying activities conducted over a shallow water table (less than 30m below ground level) that is above an aquifer used for a human drinking water supply.”

These regulations are additional protections to the requirements under the [Resource Management \(National Environmental Standard for Sources of Human Drinking Water\) Regulations 2007](#) (‘NES for Sources of Human Drinking Water’) which sets requirements to protect sources of human drinking water from being contaminated. Councils may have developed other rules under the ‘NES for Sources of Human Drinking Water’ that do not meet the requirements of Regulation 6(3)(c) and (d). These rules will apply to plantation forestry activities as each NES is binding and must be observed and enforced by councils.

For the purposes of Regulation 6(3)(c), upstream is defined by Regulation 6(5) in a manner consistent with the ‘NES for Sources of Human Drinking Water’ as follows:

upstream, in relation to an abstraction point, means,—

(a) in the case of water (other than a lake), upstream of the abstraction point

(b) in the case of groundwater, up-gradient of the abstraction point

(c) in the case of a lake,—

(i) anywhere within the lake that could affect the water quality at the abstraction point (in the lake);

⁴² Rule 71. Table 9.5, Chapter 9 – Rural of the Rotorua District Plan (Operative, 2016)

⁴³ Standards A9.2.4 and A9.2.8, Appendix 9 of the Rotorua District Plan (Operative, 2016) although other standards also apply to specific forests or specific geothermal areas.

- (ii) upstream of any river that could affect the water quality at the abstraction point (in the lake);
- (iii) up-gradient of any groundwater that could affect the water quality at the abstraction point (in the lake).

Regulations 6(3)(c) and (d) recognise that forestry activities can have adverse effects on sources of human drinking water. The risks to these waterbodies are where *plantation forestry activities* conducted upstream of a drinking water abstraction point are carried out in such a way that they generate excessive sedimentation. A risk may also exist where *forestry quarrying* is conducted over an aquifer in such a way that sedimentation is able to enter the aquifer. Some councils have developed rules to protect waterbodies that are sources of drinking water from activities that produce sediment or breach aquitards⁴⁴. These rules will prevail over the NES-PF when they meet the requirements of Regulation 6(3)(c) or (d).

4.9.2 EXAMPLES

Table 11 provides examples of plan rules that protect the two sources of human drinking water specified under Regulation 6(3)(c) and (d) and may be more stringent than the NES-PF. These examples are correct at the time of publication, and each council will need to determine how the rules in their plan relate to Regulation 6(3)(c) and (d) and the NES-PF provisions.

Table 11: Examples of plan rules that protect the sources of human drinking water.

Plan	Example
<p><i>Canterbury Land and Water Regional Plan (Operative 2017)</i></p>	<p>This Regional Plan has scheduled ‘Community Drinking Water Protection Zones⁴⁵’, which can apply to both surface and groundwater supplies⁴⁶. Protection areas for aquifers are calculated from the point of take (a bore) based on the type of aquifer and screen/well depth. Protection areas for surface water bodies are calculated across the full width of the bed, and within a lateral distance of 50 m from the bed as follows:</p> <ul style="list-style-type: none"> • Upstream on a river: 1,000 metres • Downstream on a river: 100 metres • On a lake: 500 metres radius from the point of take. <p>These ‘Community Drinking Water Protection Zones’ are protected from specific types of water takes and discharges, including a general ‘catch all’ rule that ‘<i>any other discharge</i>’ of water or contaminants, not otherwise specified by a rule, onto or into land in circumstances where a contaminant may enter groundwater, would require consent as a Discretionary activity if it is within a Community Drinking Water Protection Zone⁴⁷. These rules protecting community drinking water supplies are more stringent than the NES-PF. As such, they would prevail over the NES-PF under Regulation 6(3)(c).</p>
<p><i>Proposed Natural Resource Plan for the Wellington</i></p>	<p>This Regional Plan has identified ‘Community Drinking Water Supply Protection Areas⁴⁸’ which can apply to both surface and groundwater supplies. These protection areas are mapped spatially and are protected from the discharge of contaminants onto or into land. Any such discharge requires consent as a restricted discretionary activity under Rule 92⁴⁹. These rules protecting community drinking water supplies are more</p>

⁴⁴ An aquitard is a bed of low permeability along an aquifer

⁴⁵ Note that the definition of ‘Community Drinking Water Supply’ in the Canterbury Land and Water Regional Plan (Operative 2017) protects a drinking water supply that provides no fewer than 25 people with drinking-water for not less than 60 days each calendar year, which is consistent with Regulation 6(3)(c).

⁴⁶ Community Drinking Water Protection Zones are identified in Schedule 1 of the Canterbury Land and Water Regional Plan (Operative 2017), both through listing specific areas and by describing how the protection zones are calculated.

⁴⁷ Rules 5.98 and 5.100 of the Canterbury Land and Water Regional Plan (Operative 2017).

⁴⁸ Note that the definition of ‘Community Drinking Water Supply’ in the Canterbury Land and Water Regional Plan (Operative 2017) protects a drinking water supply that provides no fewer than 501 people with drinking-water for not less than 60 days each calendar year. This is still consistent with Regulation 6(3)(c) despite the minimum number of people being higher than specified in the NES-PF which is more than 25 people.

⁴⁹ Section 5.3.9 of the Proposed Natural Resource Plan for the Wellington Region (Proposed 2015).

Plan	Example
<i>Region (Proposed 2015)</i>	stringent than the NES-PF. As such, these rules would prevail over the NES-PF under Regulation 6(3)(c).

5 ACTIVITIES AND EFFECTS NOT REGULATED UNDER THE NES-PF

Understanding the scope of the NES-PF and what activities and effects are regulated and not regulated is important to assist with implementation and to avoid unintended compliance issues. The NES-PF regulates the main *plantation forestry activities* and common ancillary activities that occur throughout the forestry life cycle. These are defined in Regulation 5 and described in Part 2 of the NES-PF, including:

- The eight core *plantation forestry activities* in Part 2, subparts 1-8
- The three ancillary activities in Part 2, subpart 9
- The general provisions in Part 2, subpart 10.

These regulations cover the majority of the activities and effects associated with planting, growing and harvesting *plantation forest*. Detailed information on these activities and general provisions is provided in the [NES-PF User Guide](#).

There are also forestry related activities and effects not regulated under the NES-PF that will continue to be managed under regional and district plans and/or other legislation. The fact that the NES-PF is not a complete rule set for *plantation forestry* is clearly stated in Regulation 5 which sets out the scope of *plantation forestry activities* regulated under the NES-PF. Regulations 5(3) and (4) state that:

“(3) These regulations do not apply to—

(a) vegetation clearance that is carried out before afforestation; or

(b) any activities or general provisions and conditions not specified in subclause (1).

(4) If these regulations do not apply to a particular activity, there may be rules in regional or district plans that apply to that activity.”

The explanatory note⁵⁰ for the NES-PF further expands on the scope of the NES-PF as follows:

There are also certain activities and effects that are excluded from the regulations where regional and district plan rules continue to apply. Where a national environment standard states that an activity is permitted, a plan may specify terms and conditions to deal with effects of that activity that are different from the effects dealt with in the standard. For example, the effects on cultural and historic heritage and the effects from logging truck movements are excluded from the regulations, which allows plan rules to continue to manage effects on them.

The sections below provide examples of forestry related activities and effects not regulated under the NES-PF.

5.1 THE DEFINITION OF PLANTATION FORESTRY

The definition of *plantation forestry* in Regulation 3 sets out the types of *plantation forests* the NES-PF applies to. This states that the forest must be deliberately established for commercial purposes, be at least 1 ha of continuous cover of *forest species* that has been planted and has been or will be *harvested* or *replanted*. A *plantation forest* also includes all associated *forestry infrastructure*.

The definition of *plantation forest* also sets out the forests that the NES-PF does not apply to, which includes:

- Shelter belts; or
- Nurseries, seed orchards or trees grown for fruit or nut; or
- Long-term ecological restoration plantings; or

⁵⁰ The explanatory note is not part of the regulations but is intended to indicate their general meaning.

- Willows and poplars space planted for soil conservation purpose.

The NES-PF applies to *plantation forests* in areas zoned primarily for rural or rural-residential activities. It does not apply to *plantation forests* in *urban areas* zoned primarily for residential, industrial and commercial activities. This is because any *plantation forestry activities* in these zones would require more specific controls to manage the potential effects on surrounding land uses.

Refer to section 2 of the [NES-PF User Guide](#) for more detailed guidance on the definition of plantation forestry in the NES-PF.

5.2 ACTIVITIES NOT REGULATED UNDER THE NES-PF

Not every activity that takes place in a *plantation forest* is regulated under the NES-PF. This is because they are not universally carried out as part of *plantation forestry* operations and/or it is not appropriate to have nationwide rules for these activities within the NES-PF.

Table 12 below provides examples of forestry related activities not regulated under the NES-PF. It is important to note **this list is not exhaustive**.

Table 12: Examples of activities not regulated under the NES-PF.

Activity	Explanation
Vegetation clearance prior to afforestation	<i>Vegetation clearance</i> prior to <i>afforestation</i> is not an activity which is controlled through the terms and conditions of the NES-PF and will continue to be managed through the relevant regional and district plan rules. This is clearly stated in regulation 5(3)(a) and the definition of <i>afforestation</i> . This is because the NES-PF is intended to apply to the forestry life cycle, not activities that may occur prior to <i>afforestation</i> . <i>Vegetation clearance</i> at a large scale to establish a forest could also have significant site-specific effects which are best managed at the local level.
Timber milling and processing	Timber milling and processing are not activities that are regulated under the NES-PF and will continue to be managed locally. This is clearly stated in the definition of <i>harvesting</i> which states that it does not include “ <i>milling activities or processing of timber</i> ”. This is because the effects of timber milling and processing plants are quite distinct from the effects of growing and <i>harvesting</i> a forest.
Agrichemical use	The use of agrichemicals is not an activity which is controlled through the terms and conditions of the NES-PF; instead it will continue to be managed by the relevant council. This is because agrichemical use is not universally undertaken as part of forestry operations. The use of agrichemicals is also governed by several instruments, including the Hazardous Substances and New Organisms Act and associated regulations, and codes of practice, in addition to RMA plan rules.
Gravel extraction from the beds of rivers	Gravel extraction from the beds of rivers is not an activity which is controlled through the terms and conditions of the NES-PF and will continue to be managed through regional plans. This is clearly noted in the definition of <i>forestry quarrying</i> which states that it does not include “ <i>gravel extraction from the bed of a river, lake or other water body</i> ”.
Logging truck movements on roads	The NES-PF does not regulate truck movements on roads and associated effects. The definition of <i>forestry road</i> and <i>forestry track</i> in the NES-PF specifically excludes roads and tracks that are “ <i>managed by a local authority, the Department of Conservation, or the New Zealand Transport Agency</i> ”. Local truck movements on these roads has implications under other legislation and cannot be managed through a NES.

5.3 PERMITTED ACTIVITIES - EFFECTS NOT ADDRESSED IN THE NES-PF TERMS AND CONDITIONS

Section 43A(5) of the RMA sets out the relationship between plan rules and NES when these allow or permit an activity as follows (emphasis added):

“(5) If a national environmental standard allows an activity and states that a resource consent is not required for the activity, or states that an activity is a permitted activity, the following provisions apply to plans and proposed plans:

- (a) a plan or proposed plan may state that the activity is a permitted activity on the terms or conditions specified in the plan; and*
- (b) **the terms or conditions specified in the plan may deal only with effects of the activity that are different from those dealt with in the terms or conditions specified in the standard; and***
- (c) if a plan’s terms or conditions deal with effects of the activity that are the same as those dealt with in the terms or conditions specified in the standard, the terms or conditions in the standard prevail.*

While the NES-PF conditions have been designed to address the key environmental effects associated with *plantation forestry*, such as effects on water quality and ecological effects, there are certain effects that are not addressed by the terms and conditions in the NES-PF. Table 13 below provides examples of forestry related effects not regulated under the NES-PF. It is important to note **this list is not exhaustive**.

Table 13: Examples of effects not addressed in the NES-PF terms and conditions.

Effects	Explanation
Effects on cultural and historic heritage	Effects on cultural and historic heritage values and sites, including wāhi tapu and archaeological sites, are not addressed by the terms and conditions in the NES-PF and will continue to be managed by the relevant regional and district plans. This is because cultural and heritage sites, areas and values are site specific and how these effects are managed through RMA plans varies between councils. Given the location specific nature of cultural and historic heritage sites, these are best managed through local rules and/or through the Heritage New Zealand (Pouhere Taonga) Act 2014 ⁵¹ .
Off-site nuisance effects	Off-site nuisance effects, such as the impact of logging truck movements on local roads, are not addressed by the terms and conditions in the NES-PF and will continue to be managed locally. Traffic movement and roading issues also have implications under the Local Government Act 2002.
Effects on water yield	Effects of forestry on water yield are not addressed by the terms and conditions in the NES-PF and regional council rules relating to water yield will continue to apply. <i>Afforestation</i> can have an impact on total water yield and low flows in low-to-moderate rainfall areas and this variability means that controls on <i>afforestation</i> may be required for water-sensitive catchments. For this reason, it is intended that regional councils retain the ability to manage <i>afforestation</i> in catchments that have been assessed as being water sensitive.
Effects on fire risk	The effects of forestry on fire risk are not addressed by the terms and conditions in the NES-PF and will continue to be managed locally. This is because fire risk is normally seasonal and site-specific and depends on the nature of the surrounding environment (for example, if there are houses or communities near a <i>plantation forest</i>). As such, councils will retain the ability to manage these risks locally in conjunction with the Fire and Emergency New Zealand Act 2017.
Effects on network	Effects on network utility infrastructure are not addressed by the terms and conditions in the NES-PF and will continue to be managed locally. This is because the effects of

⁵¹ Note that under the Heritage New Zealand Act, an archaeological site is defined as any place, building, or structure that was associated with human activity that occurred before 1900. Even if a particular archaeological site is not managed by a district or regional plan, damaging it will still require authorisation from Heritage New Zealand.

Effects	Explanation
utility infrastructure	forestry on network infrastructure, particularly health and safety issues, should be managed at a local level to account for local circumstances. Further, the Electricity (Hazards from Trees) Regulations 2003 applies to all trees, including <i>plantation forests</i> , that encroach on power lines. As such, effects on network utility infrastructure are best addressed at a local level.

APPENDIX A - RELEVANT RMA PROVISIONS

Section 43A. Contents of national environmental standards

- (1) *National environmental standards may—*
 - (a) *prohibit an activity:*
 - (b) *allow an activity:*
 - (c) *restrict the making of a rule or the granting of a resource consent to matters specified in a national environmental standard:*
 - (d) *require a person to obtain a certificate from a specified person stating that an activity complies with a term or condition imposed by a national environmental standard:*
 - (e) *specify, in relation to a rule made before the commencement of a national environmental standard,—*
 - (i) *the extent to which any matter to which the standard applies continues to have effect; or*
 - (ii) *the time period during which any matter to which the standard applies continues to have effect:*
 - (f) *require local authorities to review, under section 128(1), all or any of the permits to which paragraph (ba) of that subsection applies as soon as practicable or within the time specified in a national environmental standard.*
- (2) *A national environmental standard that prohibits an activity—*
 - (a) *may do one or both of the following:*
 - (i) *state that a resource consent may be granted for the activity, but only on the terms or conditions specified in the standard; and*
 - (ii) *require compliance with the rules in a plan or proposed plan as a term or condition; or*
 - (b) *may state that the activity is a prohibited activity.*
- (3) *If an activity has significant adverse effects on the environment, a national environmental standard must not, under subsections (1)(b) and (4),—*
 - (a) *allow the activity, unless it states that a resource consent is required for the activity; or*
 - (b) *state that the activity is a permitted activity.*
- (4) *A national environmental standard that allows an activity—*
 - (a) *may state that a resource consent is not required for the activity; or*
 - (b) *may do one or both of the following:*
 - (i) *state that the activity is a permitted activity, but only on the terms or conditions specified in the standard; and*
 - (ii) *require compliance with the rules in a plan or proposed plan as a term or condition.*
- (5) *If a national environmental standard allows an activity and states that a resource consent is not required for the activity, or states that an activity is a permitted activity, the following provisions apply to plans and proposed plans:*
 - (a) *a plan or proposed plan may state that the activity is a permitted activity on the terms or conditions specified in the plan; and*

- (b) *the terms or conditions specified in the plan may deal only with effects of the activity that are different from those dealt with in the terms or conditions specified in the standard; and*
 - (c) *if a plan's terms or conditions deal with effects of the activity that are the same as those dealt with in the terms or conditions specified in the standard, the terms or conditions in the standard prevail.*
- (6) *A national environmental standard that allows a resource consent to be granted for an activity—*
- (a) *may state that the activity is—*
 - (i) *a controlled activity; or*
 - (ii) *a restricted discretionary activity; or*
 - (iii) *a discretionary activity; or*
 - (iv) *a non-complying activity; and*
 - (b) *may state the matters over which—*
 - (i) *control is reserved; or*
 - (ii) *discretion is restricted.*
- (7) *A national environmental standard may specify the activities for which the consent authority—*
- (a) *must give public notification of an application for a resource consent:*
 - (b) *is precluded from giving public notification of an application for a resource consent:*
 - (c) *is precluded from giving limited notification of an application for a resource consent.*

43B Relationship between national environmental standards and rules or consents

- (1) *A rule or resource consent that is more stringent than a national environmental standard prevails over the standard, if the standard expressly says that a rule or consent may be more stringent than it.*
- (2) *For the purposes of subsection (1),—*
- (a) *a rule is more stringent than a standard if it prohibits or restricts an activity that the standard permits or authorises:*
 - (b) *a resource consent is more stringent than a standard if it imposes conditions on an activity that the standard does not impose or authorise.*
- (3) *A rule or resource consent that is more lenient than a national environmental standard prevails over the standard if the standard expressly says that a rule or consent may be more lenient than it.*
- (4) *For the purposes of subsection (3), a rule or resource consent is more lenient than a standard if it permits or authorises an activity that the standard prohibits or restricts.*
- (5) *A land use consent or a subdivision consent granted under the district rules before the date on which a national environmental standard is notified in the Gazette prevails over the standard.*
- (6) *The following permits and consents prevail over a national environmental standard:*
- (a) *a coastal, water, or discharge permit:*
 - (b) *a land use consent granted in relation to a regional rule.*
- (6A) *Subsection (6) applies—*

- (a) *if those permits or consents are granted before the date on which a relevant national environmental standard is notified in the Gazette:*
- (b) *until a review of the conditions of the permit or consent under section 128(1)(ba) results in some or all of the standard prevailing over the permit or consent.*
- (7) *This subsection applies to a resource consent not covered by subsection (5) or (6). The consent prevails over a national environmental standard if the application giving rise to the consent was the subject of a decision on whether to notify it before the date on which the standard is notified in the Gazette. However, the consent does not prevail if the standard expressly provides otherwise.*
- (8) *[Repealed]*
- (9) *If a national environmental standard requires a resource consent to be obtained for an activity, sections 10, 10A, 10B, and 20A(2) apply to the activity as if the standard were a rule in a plan that had become operative.*

44A Local authority recognition of national environmental standards

- (1) *Subsections (3) to (5) apply if a local authority's plan or proposed plan contains a rule that duplicates a provision in a national environmental standard.*
- (2) *Subsections (3) to (5) apply if a local authority's plan or proposed plan contains a rule that conflicts with a provision in a national environmental standard. A rule conflicts with a provision if—*
 - (a) *both of the following apply:*
 - (i) *the rule is more stringent than the provision in that it prohibits or restricts an activity that the provision permits or authorises; and*
 - (ii) *the standard does not expressly say that a rule may be more stringent than it; or*
 - (b) *the rule in the plan is more lenient than a provision in the standard and the standard does not expressly specify that a rule may be more lenient than the provision in the standard.*
- (3) *If the duplication or conflict is dealt with in the national environmental standard in one of the ways described in section 43A(1)(e), the local authority must amend the plan or proposed plan to remove the duplication or conflict—*
 - (a) *without using the process in Schedule 1; and*
 - (b) *in accordance with the specification in the national environmental standard.*
- (4) *If the duplication or conflict arises as described in section 43A(5)(c), the local authority must amend the plan or proposed plan to remove the duplication or conflict—*
 - (a) *without using the process in Schedule 1; and*
 - (b) *as soon as practicable after the date on which the standard comes into force.*
- (5) *In every other case of duplication or conflict, the local authority must amend the plan or proposed plan to remove the duplication or conflict—*
 - (a) *without using the process in Schedule 1; and*
 - (b) *as soon as practicable after the date on which the standard comes into force.*
- (6) *A local authority may amend a plan or proposed plan to include a reference to a national environmental standard—*
 - (a) *without using the process in Schedule 1; and*
 - (b) *after the date on which the standard comes into force.*
- (7) *Every local authority and consent authority must observe national environmental standards.*

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

APPENDIX B - RELEVANT PROVISIONS OF THE NEW ZEALAND COASTAL POLICY STATEMENT

Policy 11: Indigenous biological diversity (biodiversity)

To protect indigenous biological diversity in the coastal environment:

- a. *avoid adverse effects of activities on:*
 - i. *indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;*
 - ii. *taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;*
 - iii. *indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;*
 - iv. *habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;*
 - v. *areas containing nationally significant examples of indigenous community types; and*
 - vi. *areas set aside for full or partial protection of indigenous biological diversity under other legislation; and*
- b. *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:*
 - i. *areas of predominantly indigenous vegetation in the coastal environment;*
 - ii. *habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;*
 - iii. *indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;*
 - iv. *habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;*
 - v. *habitats, including areas and routes, important to migratory species; and*
 - vi. *ecological corridors, and areas important for linking or maintaining biological values identified under this policy.*

Policy 13: Preservation of natural character

1. *To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*
 - a. *avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and*

- b. *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; including by:*
 - c. *assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and*
 - d. *ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.*
2. *Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:*
- a. *natural elements, processes and patterns;*
 - b. *biophysical, ecological, geological and geomorphological aspects;*
 - c. *natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;*
 - d. *the natural movement of water and sediment;*
 - e. *the natural darkness of the night sky;*
 - f. *places or areas that are wild or scenic;*
 - g. *a range of natural character from pristine to modified; and*
 - h. *experiential attributes, including the sounds and smell of the sea; and their context or setting.*

Policy 15: Natural features and natural landscapes

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:

- a. *avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and*
- b. *avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment; including by:*
- c. *identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:*
 - i. *natural science factors, including geological, topographical, ecological and dynamic components;*
 - ii. *the presence of water including in seas, lakes, rivers and streams;*
 - iii. *legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;*
 - iv. *aesthetic values including memorability and naturalness;*
 - v. *vegetation (native and exotic);*
 - vi. *transient values, including presence of wildlife or other values at certain times of the day or year;*

- vii. *whether the values are shared and recognised;*
 - viii. *cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;*
 - ix. *historical and heritage associations; and*
 - x. *wild or scenic values;*
- d. *ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules; and*
- e. *including the objectives, policies and rules required by (d) in plans.*

Policy 22: Sedimentation

1. *Assess and monitor sedimentation levels and impacts on the coastal environment.*
2. *Require that subdivision, use, or development will not result in a significant increase in sedimentation in the coastal marine area, or other coastal water.*
3. *Control the impacts of vegetation removal on sedimentation including the impacts of harvesting plantation forestry.*
4. *Reduce sediment loadings in runoff and in stormwater systems through controls on land use activities.*

APPENDIX C - EXAMPLES OF FORESTRY SPECIFIC PLAN RULES THAT DUPLICATE OR CONFLICT WITH THE NES-PF

The examples below are intended to provide additional context and guidance to assist with the plan alignment process. However, each council will need to go through the process of assessing the relationship of their plan rules with the NES-PF based on the legal relationships set out in section 43A, 43B and 44A of the RMA.

Plan	Rule	Explanation of duplication / conflict
<p>Rotorua District Plan (Operative, 2016)</p>	<p>Rule 9. Plantation forestry including harvesting Rural 1 Zone: Permitted Activity</p> <p>9.6 Performance Standards</p> <p>Permitted or controlled activities undertaken within the rural zones shall comply with all the following performance standards.</p> <p>Activities relating to Section 6 matters listed in Appendices 1 and 2 shall comply with the performance standards within Appendix 9 – Section 6 Matters.</p> <p>16. Plantation Forestry</p> <p>a. Upon establishment of plantation forest no planted area shall be closer than 30 metres from;</p> <ul style="list-style-type: none"> i. Any dwelling or building. ii. The boundary of any residential zone iii. The boundary of any Rural 2 or 3 zone. iv. Public roads where vegetation could shade the paved part of the road between the hours of 10am and 2pm on the shortest day of the year, unless: <ul style="list-style-type: none"> a) Topography is already preventing the direct access of sunlight onto the road; b) The road is a private road, an unsealed road (which is not programmed to be sealed within the lifetime of this plan) or the vegetation existed at the time of notification of the District Plan; 	<p>Conditions in the rule duplicate and conflict – <i>afforestation</i> and <i>replanting</i> (territorial authority functions).</p> <p>Afforestation setbacks from zones, buildings and roads</p> <p>Performance standard 16.a(i) is more lenient and conflicts with the NES-PF - Regulation 14(1)(b) requires <i>afforestation</i> to be setback at least 40 metres from a dwelling and this rule only require a 30 metres setback.</p> <p>Performance standard 16.a(ii) duplicates the setback requirements in the NES-PF - Regulation 14(1)(c) requires <i>afforestation</i> to be set back 30 metres from the boundary of land zoned as an <i>urban area</i> (which includes residential zones).</p> <p>Performance standard 16.a(ii) conflicts with the NES-PF as it requires a 30 metre setback from other rural zones. This is more stringent than the NES-PF which does not require setbacks from the boundary of any rural zone.</p> <p>Regulation 14(2) of the NES-PF requires that <i>afforestation</i> must not occur where a plantation forest tree, when fully grown, could shade a paved public road between 10 am and 2 pm on the shortest day of the year, except where the topography already causes shading. Standard 16.a(iv) duplicates Regulation 14(2) of the NES-PF, with the exception</p>

Plan	Rule	Explanation of duplication / conflict
	<p>c) The written consent of the relevant road controlling authority is obtained, and submitted to the Rotorua District Council, prior to the commencement of planting, which clearly shows the location of the vegetation, and confirms that the road controlling authority is satisfied that the vegetation does not pose a safety risk.</p> <p>b. Upon establishment of new plantation forest no planted area shall be closer than 10 metres from a boundary with land in separate ownership in Rural zone RR1.</p> <p>c. Upon establishment of plantation forest no planted area shall be closer than;</p> <ul style="list-style-type: none"> i. 5metres from any perennial river and stream with a channel width less than 3 metres. ii. 5 metres from any perennial rivers and streams with a channel width greater than 3 metres. iii. 10 metres from the edge of lakes, wetlands and remnant areas of indigenous biodiversity including significant natural areas (SNA). iv. Any plantation forestry located within outstanding natural features and landscapes or cultural sites, or significant natural areas (SNA) shall be in accordance with the provisions of part 2 and 3. <p>d. No proposed dwelling or building shall be located within 30 metres from the edge of any established plantation forest.</p> <p>e. When replanting immediately adjacent to indigenous vegetation identified, mapped or scheduled in a district or regional plan as a significant natural area replanting must not take place closer than the stump line of the previous crop.</p>	<p>of 16. a.c) which conflicts with the NES-PF as it provides an exception to the performance standard that is not included in the NES-PF. This is more lenient than the NES-PF.</p> <p>Setbacks from waterbodies</p> <p>Setbacks from waterbodies are not a territorial authority function under the NES-PF. Therefore, performance standard 16.c conflicts with the NES-PF as they are more stringent in relation to territorial functions. However, they are consistent with the regional setbacks for afforestation in Regulation 14(3) so the outcome will be the same.</p> <p>Setbacks from significant natural areas</p> <p>The 10 metre setback from <i>significant natural areas</i> in performance standard 16.c duplicates the setback requirements in Regulation 14(1)(d) of the NES-PF.</p> <p>Outstanding natural features and landscapes, and significant natural areas</p> <p>Regulation 6(2) of the NES-PF enables District Plan's to include rules more stringent than the NES in relation to the protection of <i>outstanding natural features and landscapes</i>, and <i>significant natural areas</i>. Rule 16.c.iv would therefore prevail over NES-PF in relation to ONFLs and SNAs where the provisions in part 2 and 3 are more stringent.</p> <p>The protection of cultural sites is not regulated under the NES-PF and <i>plantation forestry activities</i> affecting these sites continue to be managed through the District Plan. The provisions of part 2 and 3 of the District Plan would therefore need to be complied with when standard 16.c(iv) applies to a <i>plantation forestry activity</i>.</p>

Plan	Rule	Explanation of duplication / conflict
		<p>Replanting</p> <p>Performance standard 16.e duplicates the setback requirements for <i>replanting</i> adjacent to a <i>significant natural area</i> in Regulation 78(1) of the NES-PF.</p>
<p>Tasman Resource Management Plan (Operative in part, 2008)</p>	<p>17.5.4.1. Permitted Activities (Plantation Forests, Horticultural Plantings, Spray Belts and Shelter Belts)</p> <p>Plantation Forest* Setbacks</p> <p>a. Plantation forests are set back at least:</p> <ol style="list-style-type: none"> i. 50 metres from a Residential Zone boundary; ii. 30 metres from a dwelling; iii. 10 metres from any boundary, except that: <ol style="list-style-type: none"> a) trees are not planted or allowed to grow in a position which could result in any dwelling on an adjoining property becoming shaded between 10.00 am and 2.00 pm on the shortest day; and b) this setback need not apply where there is a written agreement between adjoining property owners that is lodged with Council. iv. 10 metres from the intersection of any formed legal road; v. 10 metres from the bed of any river or stream greater than 3 metres average bed width; vi. 10 metres from the bed of any lake; vii. 50 metres from the coastal marine area. <p><i>*Plantation forestry</i> – means the planting, management, harvesting and replanting of trees, where the stocking density of any plantation is 150 or more stems per hectare, provided that replanting is carried out within two years of harvest. Plantation Forest has a corresponding meaning.</p>	<p>Conditions in the rule duplicate and conflict.</p> <p>Definition of plantation forestry includes both <i>afforestation</i> (planting) and <i>replanting</i>.</p> <p>District setbacks</p> <p>This rule duplicates and conflicts with the district setbacks for afforestation set out in the NES-PF as follows:</p> <ul style="list-style-type: none"> • More stringent – setbacks from residential zones as Regulation 14(1) requires a setback of 30 metres to <i>urban areas</i>; • More lenient – setback from dwellings as Regulation 14(1)(b) requires a setback of at least 40 metres; and • Duplicates – setback requirement from a boundary of adjoining property as Regulation 14(1)(a) also requires a setback of 10 metres. <p>The 10 metre setbacks from roads is different to the NES-PF as this is based on shading at certain times of the day and may be more stringent or lenient depending on the circumstance. Therefore, standard a.iv conflicts.</p> <p>The territorial setbacks for <i>replanting</i> conflict with the NES-PF as they are more stringent, as the NES-PF only has setbacks for <i>significant natural areas</i> in relation to territorial functions.</p>

Plan	Rule	Explanation of duplication / conflict
		<p>Regional setbacks</p> <p>The rule duplicates the regional setbacks of 10 metres from the bed of any river or stream greater than a 3 metre average bed width for both <i>afforestation</i> and <i>replanting</i> in Regulation 14(3)(b)(i) and 78(2)(b)(i).</p> <p>The rule conflicts with the setbacks in the NES-PF for lakes as it applies to all lakes whereas the NES-PF setbacks to lakes only apply to lakes greater than 0.25ha (Regulation 14(3)(b)(ii) and 78(2)(b)(ii)).</p> <p>The setbacks from the Coastal Marine Area in this rule conflict with the NES-PF as they are more stringent than the 30 metre setbacks in Regulation 14(3)(c) and 78(2)(c).</p>
<p>Kaipara District Plan (Operative, 2013)</p>	<p>Rural Zone</p> <p>Rule 12.10.10 Separation Distance from Plantation Forestry</p> <p>Any building or plantation forestry activity is permitted if a 30m separation is maintained between any building and the plantation forestry on a separate site and under separate ownership.</p> <p>Activity Status if the Activity does not meet the Performance Standard – Restricted Discretionary Activity.</p> <p>Note 1: This Rule is intended to protect boundary effects while maintaining reasonable opportunity for a wide scope of activities within the Rural Zone. As such, if there is an existing lawfully established activity within the Rural Zone then the separation distances noted above would be required to avoid future land use conflicts.</p>	<p>Rule conflicts.</p> <p>This rule in the Kaipara District Plan conflicts with the NES-PF setback requirements for <i>afforestation</i> in relation to dwellings as it is more lenient than the NES-PF.</p> <p>Regulation 14(1)(b) of the NES-PF includes setbacks from dwellings for <i>afforestation</i> (except in the case of a dwelling located on the same property as the proposed <i>plantation forestry</i> to be afforested), being the greater of:</p> <ul style="list-style-type: none"> • 40 metres of a dwelling; and • A distance where the forest species when fully grown would shade a dwelling between 10 am and 2 pm on the shortest day of the year, except where topography already causes shading.

Plan	Rule	Explanation of duplication / conflict
	<p><i>Forestry: The on-going management of native or exotic trees of stands of trees deliberately established for commercial purposes for the production of timber or timber related products, and includes activities associated with land preparation, planting, pruning, felling and removal of trees from the site including the location and operation of mobile sawmill facilities on a site but excludes any other sawmilling or timber processing.</i></p>	<p>This rule also conflicts with the NES-PF as it more stringent.</p> <p>Firstly, the plan rule relates to a 'building' whereas Regulation 14(1)(b) relates to a 'dwelling'. Dwelling is defined in the RMA as being wholly or principally for the purposes of residence and has a narrower application than building which may not necessarily be used for residential purposes. The definition of 'building' in the District Plan also has a wide definition and includes buildings occupied by animals and machinery. The rule would therefore be more stringent than the NES-PF in some situations.</p> <p>Secondly, the definition of forestry includes a number of <i>plantation forestry activities</i> which the setback requirements apply to (including land preparation, pruning and <i>harvesting</i>). The setbacks to dwellings in the NES-PF only apply to <i>afforestation</i> and <i>forest quarrying</i> so this rule is more stringent in relation to in other <i>plantation forestry activity</i>.</p>
<p>Greater Wellington Natural Resources Plan (Proposed, 2015)</p>	<p><i>Rule 102: Plantation forestry harvesting on erosion prone land – permitted activity</i></p> <p>The use of land, and the discharge of stormwater into water or onto or into land where it may enter water from plantation forestry harvesting on erosion prone land is a permitted activity, provided the following conditions are met:</p> <ol style="list-style-type: none"> a. a harvest plan shall be prepared in accordance with Schedule O (forestry plan) and submitted to the Wellington Regional Council 20 working days prior to the plantation forestry harvesting, and b. disturbed vegetation or soil is not placed where it can dam or divert a surface water body, and c. slash is removed from a surface water body where it is blocking river flow or is diverting river flow and causing bank erosion, and d. work areas are effectively revegetated within 18 months after the final completion of the plantation forestry harvesting. 	<p>The conditions in the rule duplicate and conflict with the <i>earthworks</i> and <i>harvesting</i> regulations.</p> <p>Harvesting</p> <p>Rule 102.a. duplicates the NES-PF as it requires a harvest plan be prepared. The content in Schedule O of the Proposed Natural Resource Plan is the same as the harvest plan requirements in Schedule 3 of the NES-PF but not all requirements of the NES-PF are covered in Rule 102. Therefore, Rule R102.a also conflicts with the NES-PF.</p> <p>Rule 102 conditions b. and c. control similar effects to the NES-PF – regulations 67 and 69. However, these conditions are worded differently, and may result in different outcomes. Therefore, these standards conflict with the NES-PF.</p>

Plan	Rule	Explanation of duplication / conflict
	<p>e. any earthworks associated with plantation forestry harvesting shall not, after the zone of reasonable mixing, result in any of the following effects in receiving waters:</p> <ul style="list-style-type: none"> i. the production of conspicuous oil or grease films, scums of foams, or floatable or suspended materials, and ii. any conspicuous change in colour or visual clarity, and iii. any emission of objectionable odour, and iv. the rendering of fresh water unsuitable for consumption by animals, and v. any significant adverse effect on aquatic life 	<p>Revegetation</p> <p>The requirements in standard d. to revegetate within 18 months conflict with the NES-PF as it is more stringent. The NES-PF does not explicitly require revegetation/replanting within a set timeframe after harvesting but the definition of replanting states <i>replanting</i> must occur within 5 years</p> <p>Sediment discharges from earthworks and harvesting</p> <p>Rule 102 condition e. (ii., iv and v) duplicate Regulations 26 and 65 of the NES-PF - Permitted activity condition for sediment. This Regulation states “<i>Sediment originating from earthworks must be managed to ensure that after reasonable mixing it does not give rise to any of the following effects on receiving waters:</i></p> <p><i>(a) any conspicuous change in colour or visual clarity:</i></p> <p><i>(b) the rendering of fresh water unsuitable for consumption by farm animals:</i></p> <p><i>(c) any significant adverse effect on aquatic life.”</i></p> <p>However, condition 102.e also includes two water quality parameters not included in the NES-PF as these are of less relevance to plantation forestry activities (i.e. oils, scums and floatable material and objectionable odour). These conditions conflict with the NES-PF.</p>

APPENDIX D - EXAMPLES OF GENERAL RULES THAT DUPLICATE OR CONFLICT WITH THE NES-PF

The examples below are intended to provide additional context and guidance to assist with the plan alignment process. However, each council will need to go through the process of assessing the relationship of their plan rules with the NES-PF based on the legal relationships set out in section 43A, 43B and 44A of the RMA.

Plan	Rule	Duplication/Conflict
<p>Hawkes Bay Regional Resource Management Plan (Operative 2006)</p>	<p>Rule 7 Vegetation clearance and soil disturbance</p> <p>Vegetation clearance and soil disturbance activities</p> <p>Classification: Permitted</p> <ol style="list-style-type: none"> a. All cleared vegetation, disturbed soil or debris shall be deposited or contained to reasonably prevent the transportation or deposition of disturbed matter into any water body. b. Vegetation clearance or soil disturbance shall not give rise to any significant change in the colour or clarity of any adjacent water body, after reasonable mixing. c. No vegetation clearance shall occur within 5 metres of any permanently flowing river, or any other river with a bed width in excess of 2 metres, or any other lake or wetland, except that this condition shall not apply to: <ol style="list-style-type: none"> i. the clearance of plantation forestry established prior to the date of this Plan becoming operative, or ii. the areas identified in Schedule X to this Plan. d. Deposition of soil or soil particles across a property boundary shall not be objectionable or offensive, cause property damage or exceed 10 kg/m². e. Where the clearance of vegetation or the disturbance of soil increases the risk of soil loss the land shall be: <ol style="list-style-type: none"> i. re-vegetated as soon as practicable after completion of the activity, but in any event no later than 18 months with species providing equivalent or better land stabilisation; or ii. retained in a manner which inhibits soil loss. 	<p>Rule duplicates and conflicts.</p> <p>The conditions in this rule in the Hawkes Bay Regional Resource Management Plan duplicate and/or conflict with the NES-PF in the following ways:</p> <p>Harvesting/vegetation clearance</p> <ul style="list-style-type: none"> • Rule 7(c) contains a 5-metre setback for <i>vegetation clearance</i> from specified rivers, lakes or wetlands. The NES-PF does not have any setback rules for <i>vegetation clearance</i> (only has setbacks for <i>harvesting</i> machinery under regulations 68(4) and (5), which include operational exemptions). Rule 7(c) includes an exemption for existing forests but it does not include an exemption for new forests. Therefore, this rule will be more stringent than the NES-PF for new <i>plantation forests</i>. • Rule 7(e) will be more stringent than the NES-PF where <i>harvesting</i> increases risk of soil loss in terms of re-vegetation. <i>Vegetation clearance</i> as a result of <i>harvesting</i> may increase the risk of soil loss. However, there is no requirement in the NES-PF to re-vegetate the land within 18 months as there is in Rule 7(e) and this may not be practical or desirable as part of the forestry cycle. Therefore, this rule is more stringent than the NES-PF.

Plan	Rule	Duplication/Conflict
		<p>Disturbance of soil (Earthworks)</p> <ul style="list-style-type: none"> • Rule 7(a) duplicates Regulation 30(2) of the NES-PF; • Rule 7(b) duplicates Regulation 26 of the NES-PF; • Rule 7(d) relates to an effect not addressed in NES-PF as the NES-PF does not control the movement of soil or soil particles across property boundaries or enforce a kg/m² limit. • Rule 7(e) will be more stringent than the NES-PF in terms of re-vegetation following earthworks. Soil disturbance during a forestry cycle may increase the risk of soil loss. However, there is no requirement in the NES-PF to re-vegetate the land within 18 months as there is in Rule 7(e) and this may not be practical or desirable as part of the forestry cycle.
<p>Canterbury Land and Water Regional Plan (Operative 2017)</p>	<p>Rule 5.167</p> <p>The use of land for vegetation clearance outside the bed of a river or lake or adjacent to a wetland boundary but within:</p> <ol style="list-style-type: none"> a. 1 m of the bed of a lake or river or a wetland boundary in Hill and High-Country land or land shown as High Soil Erosion Risk on the Planning Maps; or b. 5m of the bed of a lake or river or a wetland boundary in all other land not shown as High Soil Erosion Risk on the Planning Maps or defined as Hill and High Country on the Planning Maps; <p>and any associated discharge of sediment or sediment-laden water in circumstances where sediment may enter surface water is a permitted activity, provided the following conditions are met:</p> <ol style="list-style-type: none"> 1. Except in relation to recovery activities, the area of bare ground resulting from vegetation clearance: 	<p>This rule in the Canterbury Land and Water Regional Plan conflicts/duplicates the NES-PF in the following ways:</p> <p>Harvesting/vegetation clearance</p> <ul style="list-style-type: none"> • There are no maximum areas of bare ground in riparian margins specified in the NES-PF for either harvesting or <i>vegetation clearance</i> activities. Rule 5.167.1 is therefore more stringent than the NES-PF. • The requirement in standard b. and c. for vegetation clearance to be undertaken in accordance with a Farm Environment Plan or in accordance with the ECOP 2007 duplicates the NES-PF requirement to prepare a Harvesting Plan under Regulation 66 of the NES-PF. It also conflicts as the Harvest Plan requirements and

Plan	Rule	Duplication/Conflict
	<ul style="list-style-type: none"> a. does not exceed 10% of the area within the relevant riparian margin at any time; or b. is undertaken in accordance with a Farm Environment Plan that has been prepared in accordance with Schedule 7 Part A; or c. for plantation forestry activities is undertaken in accordance with the Environmental Code of Practice for Plantation Forestry (ECOP) 2007; and <ol style="list-style-type: none"> 2. Except in relation to recovery activities, the vegetation clearance is not on land above 900 m above sea level; and 3. Except in relation to recovery activities, or the establishment, maintenance or repair of network utilities and fencing, the concentration of total suspended solids in the discharge does not exceed: <ul style="list-style-type: none"> a. 50g/m³ where the discharge is to any Spring-fed river, Banks Peninsula River, or to a lake, except when the background total suspended solids in the waterbody is greater than 50g/m³ in which case the Schedule 5 visual clarity standards shall apply; or b. 100g/m³ where the discharge is to any other river or to an artificial watercourse except when the background total suspended solids in the waterbody is greater than 100g/m³ in which case the Schedule 5 visual clarity standards shall apply; and 4. The felling of trees, or any part of a tree, is away from any lake, river or wetland, except where it is not practicable to do so to ensure human safety, and no logs or tree trunks are dragged through or across the bed of a lake or a permanently flowing river, or a wetland; and 5. The vegetation clearance does not occur adjacent to a salmon spawning site listed in Schedule 17, or in any inanga spawning habitat during the period of 1 January to 1 June inclusive; and 6. The vegetation is not flood or erosion control vegetation; and 7. From 5 September 2015, and in the riparian margins of the Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata, and the Waitaki rivers, vegetation clearance or cultivation does not result in a reduction in the area or diversity of existing riparian vegetation, unless the works have been authorised by a land use consent granted by the relevant territorial authority and conditions 1 to 6 above are also met, or the activity is for the purpose of the installation, operation, maintenance, upgrade or repair of infrastructure. 	<p>ECOP requirement are different to the NES-PF provisions.</p> <ul style="list-style-type: none"> • There are no restrictions on maximum height above sea level for <i>harvesting/vegetation clearance</i> in the NES-PF. The requirement in standard 2. is therefore more stringent than the NES-PF. • Rule 5.167.4 is a duplication of regulations 68(1), (2) and (3) of the NES-PF. <p>Sediment discharge</p> <ul style="list-style-type: none"> • The discharge of sediment associated with <i>plantation forestry activity</i> rules in Regulation 97 of the NES-PF do not have any thresholds for maximum suspended solids in the discharge – they focus on the effects in receiving waterbodies. The suspended solid concentration thresholds in standard 4. are therefore more stringent than the NES-PF and conflicts. <p>Fish spawning</p> <ul style="list-style-type: none"> • The reference to salmon spawning sites or inanga spawning habitat in Rule 5.167.5 duplicates and conflicts with the fish spawning rules in regulations 97(3) and (4) of the NES-PF.

Plan	Rule	Duplication/Conflict
Regional Plan: Water for Otago (Operative, 2016)	<p>Rule 13.2.1.7</p> <p>The erection or placement of any single span bridge including for pipes over the bed of a lake or river, or any Regionally Significant Wetland, is a permitted activity, providing:</p> <ul style="list-style-type: none"> (a) The bridge or its erection or placement, does not cause any flooding, nor cause any erosion of the bed or banks of the lake or river, or Regionally Significant Wetland, or property damage; and (b) No more than 20 metres of bridge occurs on any 250 metre stretch of any lake or river; and (c) There is no reduction in the flood conveyance of the lake, river or Regionally Significant Wetland; and (d) The bridge soffit is no lower than the top of the higher river bank; and (e) The bridge and its abutments are secured against bed erosion, flood water and debris loading; and (f) Where the bridge is intended for use by stock, measures are taken to avoid animal waste entering the lake, river or Regionally Significant Wetland; and (g) If the bridge is situated over or on public land, then public access over the public land is maintained. 	<p>The conditions in this rule in the Regional Plan: Water for Otago conflict/duplicate the NES-PF in the following ways:</p> <ul style="list-style-type: none"> • Rule 13.2.1.7(a) duplicates Regulation 39(c). • Rule 13.2.1.7(b) conflicts with, and is more stringent than, Regulations 43 and 46(5) of the NES-PF as there are no location or bridge length restrictions placed on crossings over lakes or rivers for single span bridges under the NES-PF. • Rule 13.2.1.7(c) is more stringent than, the NES-PF as the regulations do not have a condition about the reduction in flood conveyance of waterbodies. The <i>river crossing</i> conditions are focused on ensuring river crossings don't dam or divert water in a way which affects other structures and users. • Rule 13.2.1.7(d) conflicts with Regulation 46(5)(a) which states that there must be at least 1 metre clearance of the bridge soffit above the design flood level from a 2% AEP event. • Rule 13.2.1.7(e) duplicates Regulation 41. • Rule 13.2.1.7(f) is not applicable to plantation forestry activities. • Rule 13.2.1.7(g) relates to an effect not addressed by NES-PF and would continue to apply to plantation forestry activities.
Regional Air Quality Plan for Northland (Operative, 2005)	<p>Rule 10.2</p> <p>The discharge of dust to air from activities associated with earthworks, road and rail construction or maintenance is a Permitted Activity provided that:</p>	<p>Rule 10.2(a) in the Regional Air Quality Plan for Northland duplicates Regulation 100 of the NES-PF.</p>

Plan	Rule	Duplication/Conflict
	(a) The discharge does not result in any dust nuisance that is offensive or objectionable to neighbouring landowners/occupiers, including their properties.	
Auckland Unitary Plan (Operative in Part, 2016)	<p>E3.6.1.1. General standards Permitted activities listed in the table above [i.e. activities in, on, under or over the bed of lakes, rivers, streams and wetlands] must comply with all of the following permitted activity standards in E3.6.1.1:</p> <p>(1) The activity must not, after reasonable mixing, result in any of the following effects in receiving waters:</p> <ol style="list-style-type: none"> i. the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials; ii. any conspicuous change in the colour or visual clarity; iii. any emission of objectionable odour; iv. the rendering of fresh water unsuitable for consumption by farm animals; and v. any significant adverse effects on aquatic life. <p>(2) The activity must not result in an increase of existing flood levels up to and including the 1 per cent annual exceedance probability (AEP) flood plain on land or structures other than that owned or controlled by the person undertaking the activity.</p> <p>(3) The activity must not result in more than minor erosion or land instability.</p> <p>(4) Machinery must not sit directly on the wetted cross-section of the bed at the time of the work.</p> <p>(5) Explosives must not be used in the bed.</p> <p>(6) Mixing of construction materials and refuelling or maintenance of equipment must not occur within 10m of the bed and best site management practice must be used to avoid contaminant discharging into the water.</p>	<p>The conditions in this rule in the Auckland Unitary Plan conflict/duplicate the NES-PF in the following ways:</p> <ul style="list-style-type: none"> • Rule E3.6.1.1(1 duplicates regulations 26, 56(1), 65, 74(6) and 90. However, the rule includes two water quality parameters not included in the NES-PF as these are of less relevance to <i>plantation forestry activities</i> (i.e. oils, scums and floatable material and objectionable odour). These conditions conflict with the NES-PF. • Rule E3.6.1.1(2) is more stringent than Regulation 39 as it places more specific measure on flooding compared to the NES-PF. • Rule E3.6.1.1(3) duplicates regulations 28(2) (with respect to ephemeral flows), 32, 41 and 42 except that the NES-PF is more specific than this rule in terms of how to avoid erosion and/or land instability; • Rule E3.6.1.1(4) duplicates regulations 44(e) and (f); • Rule E3.6.1.1(5) is an effect not addressed in the NES-PF and this would continue to apply to <i>plantation forestry activities</i>. • Rule E3.6.1.1(6) duplicates Regulation 104; • Rule E3.6.1.1(7) relates to effects not addressed in NES-PF and would continue to apply to <i>plantation forestry activities</i>; • Rule E3.6.1.1(8) is an effect not addressed in the NES-PF and this would continue to apply to <i>plantation forestry activities</i>.

Plan	Rule	Duplication/Conflict
	<p>(7) The activity must not destroy, damage or modify any sites scheduled in the Historic Heritage Overlay or the Sites and Places of Significance to Mana Whenua Overlay.</p> <p>(8) The activity must not prevent public access along the lake, river, stream or wetlands.</p>	