

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

1.1 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)¹. 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*.

¹ 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.

Unique and sensitive environments:

5. Rules that manage activities in *green, yellow or orange zone* containing Separation Point granite soils;
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)².

1.2 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

² 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.

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 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.

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

1.3.1 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)³ 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.

³ For more detail, refer to the NES-PF section 32 evaluation.

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)⁴ 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
- 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’⁵ 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:

⁴ 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”.

⁵ 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.

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.

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

1.4.1 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.

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 of the [NES-PF Plan Alignment Guide](#) for the exact wording of these policies.

1.4.2 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 1 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 of the [NES-PF Plan Alignment Guide](#).

Table 1: 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:⁶</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 felling. Where these conditions are not met, <i>afforestation</i> is a non-complying 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. <ul style="list-style-type: none"> • “Afforestation 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>⁷. 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> |

⁶ 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

⁷ Rule E.12.6.4 of the Auckland Unitary Plan (Operative in Part, 2017)

| Plan | Example |
|---|---|
| | <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'⁸).</p> <p>In the Coastal Environment overlay (excluding Outstanding Natural Features/Character), the following activities are permitted⁹:</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 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. • Any new forestry within 100 metres horizontally of Mean High Water Springs is a non-complying activity¹⁰. 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. |

⁸ Section 12.1 – Introduction of the Hurunui District Plan (Decisions Version, 2016)

⁹ Rule 12.4.2 of the Hurunui District Plan (Decisions Version, 2016)

¹⁰ Rules 12.4.4, 12.4.6 and 12.4.7 of the Hurunui District Plan (Decisions Version, 2016)

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

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

1.5.2 EXAMPLES

Table 2 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 2: 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 activity¹¹. 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 activity¹². 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 activity¹³. 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 Landscape¹⁴ 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 activity¹⁵.</p> <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. |

¹¹ Rule 12.1.6.1.1 of the Far North District Plan (Operative, 2009)

¹² Ibid.

¹³ Rule 12.1.6.1.3 of the Far North District Plan (Operative, 2009)

¹⁴ Rule 12.1.6.1.4 of the Far North District Plan (Operative, 2009)

¹⁵ Rule 4b.2.8 of the Taupo District Plan (Operative, 2007)

| Plan | Example |
|---|--|
| <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 permitted¹⁶:</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 activity¹⁷ • <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 Plan¹⁸. 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.¹⁹ • <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.²⁰ • <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.²¹ • 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.²² |

¹⁶ Rule 11.4.2 of the Hurunui District Plan (Decisions Version, 2016).

¹⁷ Rule 11.4.7 of the Hurunui District Plan (Decisions Version, 2016).

¹⁸ Rule 11.4.6 of the Hurunui District Plan (Decisions Version, 2016).

¹⁹ Rule 9.5.89 of the Rotorua District Plan (Operative, 2016).

²⁰ Rule 9.5.96 of the Rotorua District Plan (Operative, 2016).

²¹ Rule 9.5.92 of the Rotorua District Plan (Operative, 2016).

²² Rule 9.5.93 of the Rotorua District Plan (Operative, 2016).

| Plan | Example |
|------|--|
| | These rules place blanket restrictions on <i>forestry tracks, afforestation, earthworks</i> and <i>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. |

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

1.6.1 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.

1.6.2 EXAMPLES

Table 3 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 3: 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". Forestry²³ 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"²⁴. • 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.²⁵ • 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.²⁶ • 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 activity²⁷. 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 activity²⁸. 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> |

²³ Including tracking, earthworks, land preparation, planting, pruning, thinning, clearing understorey (indigenous and exotic species), and harvesting.

²⁴ Rule 13-3 b.(iii) of the Horizons One Plan (Operative, 2014).

²⁵ Rule 13-3 e. of the Horizons One Plan (Operative, 2014).

²⁶ Rules 13-8 and 13-9 of the Horizons One Plan (Operative, 2014).

²⁷ Rules 4.1.1.a and 4.3.1 in Chapter 7 of the Mackenzie District Plan (Operative, 2004).

²⁸ 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), <i>indigenous vegetation clearance</i> , or tree planting requires resource consent as a non-complying activity ²⁹ . 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. |

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

1.7.1 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.

1.7.2 EXAMPLE

Table 4 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 4: Examples of plan rules relating to activities in Separation Point granite soils.

| Plan | Example |
|--|---|
| <i>Tasman Resource Management Plan (Operative, 2015)</i> | 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. The rules that apply to Land Disturbance Area 2 ³⁰ 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: |

²⁹ Rules 6.1 and 8.1.1 in Section 4 Rural of the Waimate District Plan (Operative, 2014)

³⁰ Rule 18.5.3(b) to (r) of the Tasman Resource Management Plan (Operative, 2015)

| Plan | Example |
|------|---|
| | <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 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. • 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. |

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

1.8.1 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.

1.8.2 EXAMPLES

Table 5 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 5: 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:³¹</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.” |

³¹ All rules discussed in this section are found under Rule 11.5.2 of the Waitomo District Plan (Operative, 2009).

| Plan | Example |
|---|--|
| | 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><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 follows³²:</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 • 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 activity³³. Performance standards include (but are not limited to)³⁴:</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> |

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

1.9.1 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

³² 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.

³³ Rule 71. Table 9.5, Chapter 9 – Rural of the Rotorua District Plan (Operative, 2016)

³⁴ 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.

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);
 - (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 aquitards³⁵. These rules will prevail over the NES-PF when they meet the requirements of Regulation 6(3)(c) or (d).

1.9.2 EXAMPLES

Table 6 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 6: 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 Zones³⁶, which can apply to both surface and groundwater supplies³⁷. 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 |

³⁵ An aquitard is a bed of low permeability along an aquifer

³⁶ 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).

³⁷ 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.

| Plan | Example |
|--|--|
| | <ul style="list-style-type: none"> 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 Zone³⁸. 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 Region (Proposed 2015)</i></p> | <p>This Regional Plan has identified 'Community Drinking Water Supply Protection Areas³⁹' 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 92⁴⁰. These rules protecting community drinking water supplies are more stringent than the NES-PF. As such, these rules would prevail over the NES-PF under Regulation 6(3)(c).</p> |

³⁸ Rules 5.98 and 5.100 of the Canterbury Land and Water Regional Plan (Operative 2017).

³⁹ 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.

⁴⁰ Section 5.3.9 of the Proposed Natural Resource Plan for the Wellington Region (Proposed 2015).