



# 1 Vegetation Clearance

## 1.1 INDIGENOUS VEGETATION CLEARANCE

### 1.1.1 Overview of ancillary activity

*Indigenous vegetation* clearance is an ancillary activity regulated under Regulation 5(1)(i) of the NES-PF. *Indigenous vegetation* and *vegetation clearance* are defined in the NES-PF as:

***Indigenous vegetation*** – vegetation that is predominantly vegetation that occurs naturally in New Zealand or that arrived in New Zealand without human assistance

***vegetation clearance*** –

(a) the disturbance, cutting, burning, clearing, damaging, destruction, or removal of vegetation that is not a plantation forest tree; but

(b) does not include any activity undertaken in relation to a plantation forest tree.

Regulations 93 and 94 set out the circumstances in which *indigenous vegetation* clearance and *incidental damage* associated with *plantation forestry activities* can occur as a permitted activity, and when resource consent will be required. This only applies to *indigenous vegetation* clearance that occurs during or after *afforestation* as the NES-PF does not apply to *vegetation clearance* carried out before *afforestation* (Regulation 5(3)(a)).

As a land use, *plantation forestry* differs from most other types of cultivation in that the crop area remains undisturbed for lengthy periods of time until the crop is ready for *harvesting*. In that time, non-forest species often grow up within and adjacent to the *plantation forest* trees, including indigenous species. In certain circumstances, such as edge damage, some level of *indigenous vegetation* clearance or *incidental damage* is therefore unavoidable for operational reasons. For example, *harvesting* and associated *earthworks* (including the construction of *forestry roads*) often involve removal of *indigenous vegetation* alongside the *forest species* being harvested where *indigenous vegetation* has grown up in the understory of the *plantation forest*. The conditions in Regulation 93 are to ensure that *indigenous vegetation* clearance or *incidental damage* only occurs in specific circumstances and that foresters take proactive steps to minimise the extent of any clearance or damage where this is unavoidable. This will also be an area for future monitoring as part of the NES-PF Monitoring and Evaluation Plan.

### 1.1.2 Potential adverse environmental effects

The potential adverse environmental effects of *indigenous vegetation* clearance relate to the biodiversity values of the vegetation. This will vary significantly depending on the species affected, the size of the area affected and the ecological significance of the area. There are generally very limited adverse effects on biodiversity when the area of *indigenous vegetation* being cleared, disturbed or damaged is limited and there are no significant ecological values associated with that area of *indigenous vegetation*. The potential for adverse effects will be greater when the ecological values of the indigenous vegetation are higher and/or the area affected increases.

The other potential adverse environmental effects of *indigenous vegetation* clearance are:

- *Slash* reaching water, with the main effects relating to the direction or damming of the water body, leading to changes in water chemistry and water quality.
- Soil disturbance and soil erosion, leading to sedimentation in waterbodies which can affect instream habitats.



### 1.1.3 Permitted activity and conditions

*Vegetation clearance of indigenous vegetation associated with a plantation forestry activity is a permitted activity if:*

- Conditions 93(2) or (3) are complied with.
- It is not within a *significant natural area* (unless vegetation is overgrowing a forestry track, and the track has been used within the last 50 years).

Regulation 93(4) also permits *incidental damage to indigenous vegetation* and *incidental damage* is defined in regulations 93(5)(a) to 93(5)(c).

**Territorial authorities** have functions in relation to these regulations under the NES-PF.

**Regional councils** have no functions in relation to the *indigenous vegetation* clearance and *incidental damage to indigenous vegetation* under Regulation 93 and 94 of the NES-PF.

A summary of the permitted conditions for *indigenous vegetation* clearance and *incidental damage* is provided in Table 1. Sections 1.1.4 to 1.1.6 provide more detailed guidance on these conditions to assist with interpretation and implementation. For the exact wording of the conditions, refer to the NES-PF which can be accessed through the hyperlinks below.

Table 1: Summary of permitted activity conditions for indigenous vegetation clearance and incidental damage.

Condition	Territorial Authority
<a href="#">Vegetation clearance within plantation forest (Regulation 93(2))</a>	<p><i>Vegetation clearance of indigenous vegetation</i> may occur within an area of <i>plantation forest</i> if it:</p> <ul style="list-style-type: none"> <li>• Has grown up under (or overtopped) <i>plantation forestry</i>, or</li> <li>• Is within an area of a failed <i>plantation forest</i> that failed in the last rotation period (<i>afforestation to replanting</i>); or</li> <li>• Is within an area of <i>plantation forest</i> that has been harvested within the previous 5 years; or</li> <li>• Is overgrowing a forestry track and the track has been used within the last 50 years.</li> </ul>
<a href="#">Vegetation clearance within or adjacent to plantation forest (Regulation 93(3))</a>	<p><i>Vegetation clearance of indigenous vegetation</i> located within or adjacent to a <i>plantation forest</i> may be carried out if the:</p> <ul style="list-style-type: none"> <li>• Area of <i>indigenous vegetation</i> and the <i>plantation forest</i> are held in the same ownership; and</li> <li>• Cumulative clearance does not exceed 1ha or 1.5% (whichever is the greater) of the total area of <i>indigenous vegetation</i> within or adjacent to the <i>plantation forest</i> in which the clearance is proposed but excluding any <i>vegetation clearance</i> listed in Regulation 93(2).</li> </ul>
<a href="#">Incidental damage within or adjacent to a plantation forest (Regulation 93(4) and (5))</a>	<p><i>Incidental damage</i> is a permitted activity and may occur in an area that is within or adjacent to any <i>plantation forest</i>, including a <i>riparian zone</i>.</p>

### 1.1.4 Regulation 93(2) – Where indigenous vegetation clearance may occur

Regulation 93(2) outlines four circumstances where clearance of *indigenous vegetation* within a *plantation forest* is permitted. In most cases, it is expected that it will be straightforward to determine when *indigenous vegetation* clearance falls into one of these



four categories. For example, when *indigenous vegetation* has grown up within a *plantation forest* while the *forest species* also grew.

The clearance of *indigenous vegetation* in any of these circumstances is not subject to the clearance limits in Regulation 93(3). Foresters can clear the amount of *indigenous vegetation* that is necessary to meet their operational requirements within the *plantation forest* provided:

- The *indigenous vegetation* falls within one of the circumstances listed in Regulation 93(2).
- It is not within a *significant natural area* (except in the case of clearance of a *forestry track* described in sub-clause (2)(d)).

#### 1.1.5 Regulation 93(3) – Clearance limits

Regulation 93(3) limits the area of *indigenous vegetation* that can be cleared as a permitted activity within or adjacent to a *plantation forest* when it does not fall into any of the categories listed in Regulation 93(2). This only applies to areas of *indigenous vegetation* that are in the same ownership as the *plantation forest*.

Regulation 93(3) applies two limits on the cumulative amount of *vegetation clearance* that can occur – 1ha or 1.5% (whichever is the greater) of the total area of *indigenous vegetation* within or adjacent to a *plantation forest*. These limits exclude any *indigenous vegetation* clearance permitted under Regulation 93(2).

For smaller *plantation forests*, the maximum amount of cumulative *indigenous vegetation* clearance will generally be 1 ha. For larger *plantation forests*, the 1.5% threshold is likely to be the greater limit. The maximum cumulative area of *indigenous vegetation* clearance that is permitted is 0.015 x the total area (ha) of the *indigenous vegetation* within or adjacent to the *plantation forest*. Applying the 1.5% threshold will therefore require a good understanding of the amount of *indigenous vegetation* within the *plantation forest* and this can be extensive for some *plantation forests*. The 1.5% threshold should be calculated as the total area of *vegetation clearance* per *plantation forest* rather than the individual land parcel.

#### 1.1.6 Regulations 93(4) and (5) – Incidental damage

Regulation 93(4) permits *incidental damage* to *indigenous vegetation* in three circumstances which are defined in Regulation 93(5). *Incidental damage* is defined in Regulation 93(5) as:

- (a) *damage where the ecosystem will recover to a state where, within 36 months of the damage occurring, it will be predominately of the composition previously found at that location; or*
- (b) *damage to indigenous vegetation canopy trees that are greater than 15 m in height, where the damage does not exceed -*
  - (i) *30% of the crown of any indigenous vegetation canopy trees and no more than 30% of those trees per 100m of the indigenous vegetation perimeter length; or*
  - (ii) *10m in continuous length per 100m of a riparian zone length (with the applicable riparian zone width); or*
- (c) *if it occurs adjacent to a significant natural area, damage that*
  - (i) *does not significantly affect the values of that significant natural area; and*
  - (ii) *allows the ecosystem to recover as specified in paragraph (a).*

*Incidental damage* captures three distinct types of vegetation damage and it will be up to the forester to determine what type of *incidental damage* applies to their activity. For example:



- *Incidental damage to indigenous vegetation* canopy trees caused by work adjacent to or within a *riparian zone* is regulated under Regulation 93(5)(b)(ii).
- *Incidental damage to a significant natural area* is regulated under Regulation 93(5)(c).

*Incidental damage to indigenous vegetation* only needs to fall within one of the categories listed in Regulation 93(5) to be permitted under Regulation 93(4).

#### 36-month recovery timeframe

In areas of *indigenous vegetation* within or adjacent to a *plantation forest* there is a naturally occurring collection of species. If some of the species in this collection are damaged, Regulation 93(5)(a) states the ecosystem must recover to a state where it will be '*predominately of the composition previously found at that location*' within 36 months. The intent is to ensure natural regeneration can occur and the ecosystem itself is sustained, although there may be some natural change in the exact species at that location.

In the case of *riparian zones* (often the area most likely to incur *incidental damage* during *harvesting*), much of the vegetation is shrubby hardwood, adapted to recover from damage (e.g. due to normal flooding of the adjacent stream). In these areas, species recovery from *incidental damage* can often be expected within the 36-month timeframe.

If after 36 months of the *incidental damage* occurring, there is a significant change in the extent and type of vegetation present (e.g. the extent of *indigenous vegetation* has been significantly reduced and largely replaced by introduced weed species), then the ecosystem has not recovered to a state where it is predominately the composition previously found at that location and Regulation 93(5)(a) will not be complied with. To avoid potential compliance issues with Regulation 93(5)(a), it may be helpful to have some geo-referenced photos to be able to compare vegetation composition prior to or after the *incidental damage*.

#### Damage to canopy trees

Regulation 93(5)(b) permits *incidental damage* to canopy trees over 15m tall within and adjacent to a *plantation forest* and within a *riparian zone*.

Regulation 93(5)(b)(i) permits *damage* to indigenous canopy trees that does not exceed 30% of canopy trees per 100m of *indigenous vegetation* perimeter length and 30% of the crown of the tree. The crown of the tree is the branches, leaves, and reproductive structures extending from the trunk or main stems. The 30% limit is set on the basis that any damage that exceeds this is likely to result in the death of the tree. The most likely scenario where Regulation 93(5)(b)(i) will apply is where an indigenous forest remnant is surrounded by a *plantation forest*. Some damage of these canopy trees is likely to occur during the *harvesting* of the *forest species*.

Regulation 93(5)(b)(ii) applies to *incidental damage* of canopy trees over 15m tall in a *riparian zone*. *Riparian zone* is defined in the NES-PF as:

*'that margin and bank of a water body, including the area where direct interaction occurs between land and water systems, that is important for the management of water quality and ecological values.'*

Many *plantation forests* are located directly adjacent to *riparian zones* and these are also located within *plantation forests*. Regulation 93(5)(b)(ii) allows *incidental damage* of up to 10m of continuous length per 100m of a *riparian zone* (within the applicable *riparian zone* width). This allows for some damage to these trees for operational reasons while ensuring the function of the *riparian zone* to manage water quality and ecological values is maintained.

Compliance with Regulation 93(5)(b)(ii) should generally be able to be achieved through a visual inspection supported by photographic evidence as appropriate.



### Incidental damage to a significant natural area

Regulation 93(5)(c) provides that *incidental damage* can occur in a *significant natural area* provided:

- It does not significantly affect the values of that *significant natural area*; and
- The ecosystem can recover as specified in 93(5)(a) – i.e. it can recover to a state where it is predominately of the composition previously found at that location within 36 months.

The purpose of Regulation 93(5)(c) is to permit a small amount of damage to a *significant natural area* when *plantation forestry activities* are being undertaken immediately next to that *significant natural area*. This reflects the practical reality that there will inevitably be some edge damage to a *significant natural area* when activities such as *harvesting* occur alongside a *significant natural area*. The conditions in Regulations 93(5)(i) and 93(5)(ii) are to ensure any damage to a *significant natural area* is minimised and that foresters take proactive steps to comply with these conditions (e.g. felling trees away from these areas when safe and practicable to do so).

Compliance with Regulation 93(5)(c) needs to be assessed based on the specific values identified for the adjacent *significant natural area*. The reasons that the site received *significant natural area* status and its values should be identified from the *significant natural area* description in the plan and/or background reports. These are the values that should be assessed when considering the impact of *incidental damage* and whether it will significantly affect the values of that *significant natural area*.

For example, if a *significant natural area* was protected because it contained a rare or threatened species, but the *incidental damage* was not going to occur to the part of the *significant natural area* containing that species (and would not significantly affect that species in any other way), the damage would likely be '*incidental damage*' under Regulation 93(5)(c). Generally, small-scale peripheral damage associated with *harvesting* (the most likely activity to cause such damage) in a *significant natural area* will not significantly affect the values of a *significant natural area* and will allow the ecosystem to recover at that location within 36 months.



## 1.2 NON-INDIGENOUS VEGETATION CLEARANCE

### 1.2.1 Overview of ancillary activity

Non-indigenous *vegetation clearance* is regulated activity under Regulation 5(1)(i).

*Vegetation clearance* is defined in the NES-PF as:

***vegetation clearance*** –

(a) means the disturbance, cutting, burning, clearing, damaging, destruction, or removal of vegetation that is not a plantation forest tree; but

(b) does not include any activity undertaken in relation to a plantation forest tree

Non-indigenous *vegetation clearance* applies to the clearance of vegetation associated with a *plantation forest activity* that is not:

- *Indigenous vegetation* clearance regulated under regulations 93 and 94 in the NES-PF
- *Harvesting* as this is a regulated *plantation forestry activity* under Regulation 5(1)(f) and has a specific set of regulations in Part 2, subpart 6. The definition of *harvesting* also specifically excludes *vegetation clearance* of species that are not *plantation forest trees*.

### 1.2.2 Permitted activity and conditions

Regulation 95 permits non-indigenous *vegetation clearance* associated with a *plantation forestry activity* in relation to **territorial authority** functions and **regional council** functions provided that the relevant permitted activity conditions are met for the associated *plantation forestry activity* causing the clearance. The purpose of this Regulation is to make it clear that non-indigenous *vegetation clearance* associated with a *plantation forestry activity* is authorised under the NES-PF (if the conditions relevant to the activity are complied with). This is for the avoidance of doubt and to ensure foresters do not need to check the relevant plan to determine whether there are any non-indigenous *vegetation clearance* rules they need to comply with. For example, Regulation 95 authorises the removal of weeds, pest plants and shrubs that have established within or adjacent to the *plantation forest* over the forestry life cycle when this is associated with a *plantation forestry activity*.