



1 Fixing charges for monitoring permitted activities

1.1 OVERVIEW OF PART 3 OF THE NES-PF - LOCAL AUTHORITIES MAY CHARGE FOR MONITORING PERMITTED ACTIVITIES

The RMA was amended by the Resource Legislation Amendment Act 2017 to enable councils to charge for monitoring specified permitted activities in a NES, where the NES expressly empowers them to do so (section 43A(8) of the RMA). Councils may fix charges payable by the person carrying out the permitted activity for the monitoring of that activity, if the NES empowers them to charge for it (section 36(1)(cc) of the RMA).

The NES-PF is the first NES that enables councils to charge for the costs of monitoring permitted activities. This is enabled through Regulation 106 of the NES-PF which states:

106 Local authorities may charge for monitoring permitted activities

A local authority responsible for monitoring any of the following permitted activities may charge for its monitoring of those activities:

- (a) regulation 24 (earthworks)*
- (b) regulation 37 (river crossings)*
- (c) regulation 51 (forestry quarrying)*
- (d) regulation 63(2) (harvesting).*

Regional councils have functions in relation to these activities¹. Regional councils are not required to fix charges for monitoring these permitted activities under the NES-PF but may choose to do so.

The NES-PF is based on a predominantly permitted activity regime and councils may be required to monitor these activities to confirm compliance and/or ensure there are no significant adverse environmental effects from *plantation forestry activities*. Allowing councils to charge to recover their monitoring costs will help councils fulfil their obligations to observe the NES-PF and enforce that observance (sections 44A(7)-(8) of the RMA).

The four *plantation forestry activities* that councils can charge permitted activity monitoring fees have the highest risk of adverse environmental effects when conditions are not complied with. Three of these activities also require the preparation of management plans (*earthworks* and *forestry quarrying* (above specified thresholds) and *harvesting*). Monitoring compliance with a management plan may require a site audit to confirm that management practices being used on site are consistent with that stated in the management plan. Therefore, the NES-PF allows councils to charge for the monitoring of these *plantation forestry activities*.

1.2 CONSIDERATIONS FOR FIXING CHARGES AND RECOVERING COSTS

1.2.1 Fixing administrative charges

There is a specific process for councils to follow when fixing charges under the RMA and Local Government Act 2002 (LGA). This is based on the statutory requirements in section 36 (administration charges) and 36AAA (criteria for fixing administrative charges) of the RMA, and sections 83 (special consultative procedure) and 150 (fees may be prescribed by bylaw) of the LGA. The same considerations and processes apply when setting charges for monitoring permitted activities under the NES-PF. Some of the key points to consider are:

¹ Territorial authorities have functions in relation to the notice requirement for harvesting but this is unlikely to require on-site monitoring to confirm compliance.



- Section 36 of the RMA states that fees fixed under section 36(1)(cc) must be set:
 - In the manner set out in section 150 of the LGA
 - Using the special consultative procedure in section 83 of the LGA
 - In accordance with section 36AAA of the RMA.
- A council must have regard to the criteria in section 36AAA of the RMA when fixing charges. These include, that the sole purpose of the charge is to recover the reasonable costs incurred by the council.
- Section 150 of the LGA states that fees and charges may be prescribed using the special consultative procedure or through a bylaw. It is generally good practice to use the special consultative procedure to set charges and align this with the long-term plan/annual plan process under the LGA.

The key principle is that councils should fix charges for monitoring specified permitted activities in the NES-PF in the same way as it sets charges for other functions referred to in section 36(1) of the RMA. For example, council hourly rates should be consistent with those set for monitoring activities that hold resource consent (section 32(1)(c)). The fixed charges councils set to monitor permitted *plantation forestry activities* in accordance with Regulation 106 will be monitored as part of the NES-PF Monitoring and Evaluation Plan.

Section 36AAB(4) of the RMA requires councils to publish on a publicly accessible website an up-to-date list of charges they have fixed under section 36. This ensures the cost of administrative processes is visible to anyone who may be liable for fixed charges.

1.2.2 Monitoring of permitted activities

Neither the RMA nor the NES-PF specifies that monitoring permitted activities is a function of councils. For the purposes of Regulation 106, monitoring needs to be directly related to determining whether the activity is complying with the relevant permitted activity conditions in the NES-PF.

The NES-PF includes a range of procedural and performance based permitted activity conditions that are intended to work together (discussed further in section 5 of the [NES-PF Consenting and Compliance Guide](#)). The on-site monitoring of certain *plantation forestry activities* will be required in some circumstances to confirm compliance with:

- Procedural requirements – e.g. whether the person is implementing the management practices outlined in their management plan
- Performance based conditions – e.g. sediment discharges from *harvesting* must not give rise to certain adverse effects in receiving waters, *slash* is deposited away from waterbodies etc.

It is the on-site monitoring of *earthworks*, *river crossings*, *forestry quarrying* and *harvesting* that should be the focus of Regulation 106. The monitoring of the permitted activities specified in Regulation 106 will not cover the time spent prior to the permitted activity commencing, such as:

- Reviewing management plans to determine whether they are complete or to better understand the activity (although reviewing the management plan may inform and enable a more focused and efficient site visit, refer to section 5.3 of the [NES-PF Consenting and Compliance Guide](#) for more details on management plan review); and
- Determining activity status of a particular *plantation forestry activity*, i.e. checking documentation against NES-PF requirements and conditions.

Councils may choose to set fixed charges for site visits to monitor these activities or provide a scale of charges which will enable it to recover its actual and reasonable costs for



monitoring that activity. The approach councils take to set fixed charges to monitor permitted *plantation forestry activities* in accordance with Regulation 106 will be monitored as part of the NES-PF Monitoring and Evaluation Plan.

1.2.3 Recovering actual and reasonable costs

Where the fixed charge for the monitoring of a permitted activity is *'inadequate to enable a local authority to recover its actual and reasonable costs'*, section 36(5) of the RMA allows councils to require the person undertaking the activity to pay an additional charge. In setting the amount of additional charge, a council must have regard to the criteria in 36AAA(2)–(4) of the RMA.

These costs are charged at the end of the completed compliance monitoring activity and are calculated based on the reasonable costs of monitoring minus any fixed charge. All costs, whether fixed or additional charges, should be clearly described in the invoice provided to the forester, with council staff time clearly recorded and any disbursements itemised.

The ability to require foresters to pay additional charges to recover the actual and reasonable costs of monitoring permitted activities under the NES-PF may be useful in the following situations:

- The *plantation forestry activity* is a particularly large operation and it takes longer to visit certain high-risk or sensitive areas across the site to confirm compliance
- Non-compliance with a permitted activity condition is detected and more time is spent on site discussing this with the forester
- More time is required on site than usual to audit management practices against the relevant management plan.

Additional charges are subject to the rights of objection and appeal (sections 357B to 358 of the RMA) but fixed fees are not (section 36(7) of the RMA).