

National Environmental Standards for Plantation Forestry

15 September 2017

The National Environmental Standards for Plantation Forestry (NES) has implications for a wide range of Resource Management Act (Act) users – councils, the forestry sector, iwi and organisations concerned with wilding spread. It regulates plantation forestry, including afforestation, earthworks, river crossings, forestry quarrying, harvesting, mechanical land preparation, replanting, some vegetation clearance and noise.

The NES was promulgated to achieve a nationally consistent approach to the regulation of plantation forestry across the country. The residual ability of district and regional plans to regulate commercial-scale forestry is limited.

The Act limits when a rule or resource consent can be more stringent or more lenient than an NES. In this case, the NES only specifies circumstances in which a rule may be more stringent than the NES – not more lenient. Stricter rules can be imposed in relation to significant natural areas, outstanding natural features and landscapes, specified geological areas and sensitive receiving environments.

The NES was gazetted on 3 August 2017 but does not come into force until 1 May 2018. While delay between gazettal and commencement is a common feature of NES production, the delay here is materially longer than other recent NES. Previous situations have created some uncertainty about the effect of the NES in the interim period. What appears clear is:

- Councils have to amend their plans, where they duplicate or conflict with the NES, as soon as practicable after the NES comes into force
- Land use or subdivision consents granted before gazettal prevail over a NES
- But if resource consent is applied for after a NES is gazetted and the plan rules are more lenient, the NES provisions "prevails" (*Re Hastings District Council*).

A question may remain as to what "prevails" where plan rules are more stringent than the yet-to-commence NES. Whether a NES would "prevail" and triumph over rules in such situations has not been clarified by the Courts. Whilst there are provisions in the RMA supporting the notion consent might still be required for an activity permitted under a gazetted NES, there are also statutory directions requiring councils to observe NES and an Environment Court decision suggesting the "operative" date is determined by gazettal.

In the next eight months, councils will need to consider how to address "duplication" and "conflicts" with the NES and the extent to which a plan requires more stringent rules. This may not be straightforward, especially if the plan does not use the same definitions or conflates activities (only some of which are managed by the NES).

Foresters will have to get their heads around the new requirements for activities and the new tools in the NES – such as the [Erosion Susceptibility Classification](#) and [Wilding Risk Calculator](#). If they are faced with plan rules that are more stringent than the yet-to-commence NES, we suggest they should carefully consider whether the activity can wait a few months - potentially avoiding an unnecessary resource consent process.

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