

WAIMAKARIRI DISTRICT COUNCIL MEMO

FILE NO AND TRIM NO	DDS-14-01 / 231107178790
DATE	22 November 2023
MEMO TO	Hearings Commissioners
FROM	Peter Wilson, Senior Policy Planner
SUBJECT	NES on Commercial Forestry (NЕСF) and required changes

Introduction

1. Minute 12 has requested advice from Council on the following:
 - a. Council's understanding of the requirements of the NESCF;
 - b. How Council intends to proceed in respect to the NESCF, particularly in respect to matters that have already been heard by the Hearings Panel; and
2. The 'inconsistent approach' taken to the relationship between the NESCF and the Proposed District Plan and the extent existing use rights applies to plantation forestry by different report authors, including a review of sections 43 to 44A inclusive of the RMA, and the NESCF. I address each of these matters in turn below.

The NESCF

3. The Resource Management (National Environmental Standards for Commercial Forestry) Amendment Regulations 2023 have amended the National Environmental Standard for Plantation Forestry (NESPF) 2017.
4. The regulations came into force on 3 November 2023, apart from:
 - a. regulations 13(2) and 44(3) which bring in a new assessment of wilding tree risk, which has effect on 3 April 2024; and
 - b. the rest of the wilding tree risk amendments come into effect on 3 January 2024

Interpretation of NESCF changes

5. The task of interpreting the changes has been made somewhat harder by the lack of a complete NESCF, as the changes are only available in amendment form to the original regulations. It is not clear when either the Parliamentary Counsel Office or relevant Ministry will produce a complete NESCF. I have contacted both the Ministry for Primary Industries and the Ministry for Environment to understand when a final set of regulations will be produced, but neither Ministry has informed me of when the Parliamentary Counsel Office will complete its drafting.
6. I have focused on changes to the NESCF that affect territorial authorities, as most of the changes affect regional councils.

Changes to rule-making ability

7. The NESCF enables regional and district plans to have rules that manage the effects of commercial forests for afforestation (subpart 1 of Part 2 of the NESPF)¹. It also enables a rule in a plan to be more stringent or lenient than subpart 1 of Part 2 of the regulations².
8. I consider that this clarifies the situation with restricting and regulating commercial forestry in urban areas as previously unless these were within an outstanding natural landscape or feature, or a significant natural area, a plan could not contain a rule more stringent than the NESPF, and it now can. Section 43B(1) RMA also clarifies this, stating that a rule can be more stringent than a national environmental standard if the standard expressly enables it.
9. I relied on regulation 13 of the NESPF, which states that afforestation within a Visual Amenity Landscape must be a controlled activity, in supporting the Natural Character of Freshwater Bodies plantation forestry restrictions, as these natural character overlays would all meet the NESPF definition of a visual amenity landscape.
10. I note that subpart 1 of Part 2 is for afforestation only, not the other commercial forestry activities. Once afforestation occurs, the various commercial forestry activity provisions apply as part of the forestry cycle, which for existing activities, could theoretically continue indefinitely, provided there is no more than 5 years between harvesting and replanting.
11. I discuss the issue of existing use rights in greater detail below.

Definitions

12. The NESPF definition of plantation forest has been supplemented with the new NESCF definition of 'commercial forest'. Commercial forestry means "exotic continuous cover forestry or plantation forestry (r 5(1))", with the old definition of plantation forestry remaining, probably for backwards compatibility.

Exotic continuous-cover forestry (or forest) means:

a forest that is deliberately established for commercial purposes, being at least 1 ha of continuous forest cover of exotic forest species that has been planted and—

- (i) will not be harvested or replanted; or*
- (ii) is intended to be used for low-intensity harvesting 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*
- (iv) long-term ecological restoration planting of indigenous forest species; or*

¹ r 6(5)

² r 7(2)

(v) *willows and poplars space planted for soil conservation purposes*

13. Within the PDP, the definition ‘plantation forest’ or ‘plantation forestry’ could be replaced with ‘commercial forest’ without complication³.

14. Some provisions also refer to carbon forestry, which has its own notified definition:

means forest land, other than ~~Production~~ Plantation Forestry, that is for the purpose of carbon sequestration⁴.

15. Carbon forestry is now covered under the definition of commercial forestry, as carbon forestry is a type of exotic continuous-cover forestry.

16. I consider that this is a more appropriate way of describing carbon forestry noting that the use of a forest at any point in time may change, such as opting in and out of the Emissions Trading Scheme, but the forest remains.

17. **I recommend that:**

- **all instances of “plantation forestry” or “plantation forest” be replaced with “commercial forest” or “commercial forestry” where these occur.**
- **where the Proposed Plan uses the definition of ‘carbon sink’, these should be removed, as a carbon sink is now included in the definition of commercial forest.**

Woodlot issue

18. The PDP contains a definition of woodlot as follows, and proposed for amendment:

Means a stand of trees for the purposes of firewood, Christmas trees, the creation of other wood products, ~~a carbon sink~~, erosion control, pest, or wilding tree management purposes, but excluding plantation forestry and carbon forest⁵.

19. Except for areas under 1ha, a woodlot is now a commercial forest, if it has been “deliberately established for commercial purposes”. Most of the criteria of the notified woodlot definition are commercial purposes, such as firewood (if it is sold), Christmas trees, and the creation of other wood products. Therefore, most woodlots are also commercial forests.

20. Whilst the NESCF enables plan rules to be more or less stringent than the NESCF, I do not believe this extends to amending definitions, especially if the woodlot definition carves out a large range of forest types from the specified definition of commercial forest.

21. A non-commercial woodlot for domestic consumption and use with no sale or reward, such as on a farm or lifestyle block, or where the products are solely used or donated for charity would not meet the commercial forestry definition.

³ The Natural Features and Landscapes s42A report (June 2023) recommended the definition of plantation forestry be amended to align with the definition in the NESPF.

⁴ Para 957, Mark Buckley, s42A rural

⁵ Para 984, Mark Buckley, s42A rural

22. Importantly, the definition of commercial forestry does not significantly change how forests are to be managed, it is a broad definition to capture activities for the purpose of applying the NESCF provisions – most of which are permitted activities if standards are met. Exempting a forest from the definition might, at best, avoid some of the notification requirements that commercial forest owners have.
23. I note that the “stand of trees” description of a woodlot indicates a small area of land, and I consider that most woodlots are under the 1ha threshold anyway.
24. The PDP does contain rules that regulate woodlots, such as for fire safety and ice hazard setbacks, usually in conjunction with shelterbelts (which are not covered by the NESCF), and sometimes also with the general category of ‘any forestry less than 1ha’.
25. I consider that:
- **woodlot can be replaced with ‘any forestry less than 1ha’ to ensure that the rules continue to have the effect intended;**
 - **removed from other locations where it is has been superseded by the new commercial forestry definition.**

Wilding pines

26. The NESCF retains the wilding risk calculator however it requires the score and calculation sheet used in the wilding risk calculator to be provided to the Waimakariri District Council at the same time as notice of afforestation is given to the regional council⁶.
27. Section 3.6 of Mr Mark Buckley’s s42A rural zones report recommends, in response to a submission from Environment Canterbury [316.167] the addition of a new policy that advocates the minimisation of wilding pines spread, as follows⁷:

RURZ-P9 Spread of wilding trees

The spread of wilding trees is minimised and where established they are removed.

28. I have discussed this issue with Mr Buckley, and we agree that as the management of wilding pines is primarily a regional council responsibility under the NESCS, and also as the Proposed Plan rural zones contain no specific rules for wilding pines, that this recommendation can be removed as a result.

Treaty settlement legislation

29. Where plans set rules to control afforestation, these can now include effects on the values of an outstanding freshwater body where a Treaty of Waitangi settlement Act includes a statutory acknowledgement in relation to that outstanding freshwater body⁸.

⁶ r 13(4)

⁷ Pg 30-31, https://www.waimakariri.govt.nz/__data/assets/pdf_file/0013/142240/STREAM-6-RURAL-ZONE-SECTION-42A-REPORT.pdf

⁸ r 17

30. There are no statutory acknowledgements on water bodies within the District.

Notices

31. The NESPF and now NESCF contains permitted activity provisions that require notification of earthworks, quarrying, and other similar activities to be sent to the relevant regional council and territorial authority before works begin. These must now be sent at least 20 and no more than 60 working days before the date on which forest quarrying is planned to begin, or 10 days before the date within green and yellow erosion zones, and in the case of ongoing forest quarrying, annually⁹.

32. A replanting management plan is now required for all replanting activities¹⁰, and must be sent to territorial authorities at least 20 working days and no more than 8 months before the date on which replanting is planned to begin¹¹.

Permitted activity monitoring

33. Local authorities can now charge for monitoring afforestation activities, as well as the existing activities of earthworks, river crossings, forestry quarrying, and harvesting¹².

34. I recommend no changes to the PDP arising from these changes.

Existing use rights

35. The NESCF does not alter the situation with existing use rights from the NESPF as it does not change the activity statuses for activities.

36. Both NESs provide for local authorities to make rules in plans restricting afforestation activities, I note that this is different to determining existing use rights for specific established forestry activities under section 10 and 20A in relation to regional rules.

37. Considering the point above, I consider that the jurisdictional issue to be resolved within the proposed plan is the degree to which proposed provisions are consistent with the NES-CF, as this regulation in some instances creates different activity status requirements for individual components of the wider forestry activity.

38. Given the long term duration of forestry activities, which can be many decades, the question arises as to at what point an existing commercial forestry 'activity' ceases and a new activity begins. The default settings within the NESPF and NESCF would see existing use right that may exist continuing as long as forestry activities continue on that land, which includes replanting activities provided this is within five years of harvesting, as per the NESPF definition of afforestation. Harvesting and replanting of plantation/commercial forestry would not count as afforestation, as it is simply another cycle and repetition of the existing activity. If the replanting occurs more than five years after harvesting, then this meets the definition of NESPF and now NESCF afforestation. However, as there is now the ability for rules relating to

⁹ r 29

¹⁰ r 42

¹¹ r 43

¹² r 58

afforestation (as per the new Regulation 6(4A) of the NESCF) to be in a plan that are more stringent or lenient than the NESCF.

39. Where forestry activities have been authorised by consent prior to the NES being published, the consent conditions override the NES¹³, unless the NES expressly overrides that consent¹⁴.

Extent of existing use rights

40. s10 RMA provides a 12 month period for expiration of existing use rights where the activity has been discontinued, unless an extension has been granted. S20A provides a similar exemption for regional plans, except the discontinuation threshold is 6 months.
41. However, the definition of afforestation in the NESPF, which has not been altered in the NESCF has the effect that afforestation occurs when plantation forestry harvesting has not occurred on the land within the last 5 years. This means that there is a 5 year window between harvesting and replanting before the activity is treated as afforestation again, and not a continuation of an existing plantation forestry activity. This is likely to be necessary as replanting activities take longer than the 12 month threshold in s10 RMA.
42. Ms Milosavljevic outlined this in her Right of Reply on the NFL provisions and Mr Sheerin in his s42A on open space and recreation zones¹⁵. I agree with their conclusions.

Treatment of existing use rights in the PDP

43. I have collated what I believe is the position of s42A authors on existing use rights for plantation forestry. The table below outlines the position of the s42A authors and through the respective s42A reports:

Author	Position
Peter Wilson, coastal, natural character of freshwater bodies	Existing forestry activities, including the full range of forestry activities can continue under s10 RMA
Shelley Milosavljevic, natural features and landscapes	Existing forestry activities, including the full range of forestry activities can continue under s10 RMA, with a 5 year window between harvesting and replanting before it is treated as new afforestation (as per the NESPF definition of afforestation).
Mark Buckley, rural	Silent
Neil Sheerin, open space and recreation zones	Existing forestry activities, including harvesting and replanting can continue under s10 RMA, however, these cease 5 years after harvest if replanting has not occurred.

44. Having reviewed these reports and discussing the issues with the respective authors I do not consider that any inconsistency exists in the interpretation of the NES-PF, noting the clarifications within this memo and the amendments made through the NES-CF.

¹⁴ s43B RMA

¹⁵ Paras 193-199, s42A open space and recreation zones

45. The plantation/commercial forestry provisions in the PDP all use the general category of “plantation forestry activities” to describe them. This means that in practice, the plan definition of afforestation, which in turn uses the NESPF definition and contains the 5 year requirement may not be easily understood. Similarly, the definition of ‘plantation forestry’ or ‘commercial forestry’ in the NESPF/NESCF does not refer explicitly to the definition of afforestation, as this is captured as just one of the activities that make up the overall definition.

Implementation of this advice

46. I recommended in my s42A report on overarching issues and part 1¹⁶ that plantation forestry was a matter that required a wrap up hearing after each s42A author had considered the specific issues that the NESPF raised for their chapters. I continue to be of the view that it is appropriate to provide a complete set of plan amendments across all chapters that are relevant to matters covered by the NESCF as part of Stream 11.

Peter Wilson

¹⁶ Para 100, s42 overarching and part 1 matters