

Before the District Plan Hearings Panel appointed by Central Hawke's Bay District Council

In the matter of the Resource Management Act 1991 (**RMA**)

And

In the matter of the hearing of submissions on the Proposed Central Hawke's Bay
District Plan

**Memorandum of counsel for Ernslaw One Ltd and Rayonier Matariki Forests and
Council**

Dated 10 March 2022

1. Following the filing of legal submissions for Hearings Stream 1, a meeting was held between:
 - (a) Trish Fordyce, counsel for Ernslaw One Ltd and Rayonier Matariki Forests (**Submitter**);
 - (b) Lynette Baish, planner for the Submitter;
 - (c) Asher Davidson, counsel for Central Hawke's Bay District Council (**Council**);
 - (d) Stella Morgan, reporting officer; and
 - (e) Helen O'Shaughnessy, on behalf of the Council.
2. The topic was the appropriate wording for insertion as a note in the ECO – Ecosystems and Indigenous Biodiversity chapter regarding the role of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 in respect of plantation forestry affecting indigenous vegetation.
3. The parties agreed that the following wording for that advice note is appropriate:

Note – Plantation Forestry Activities - In the case of conflict with any rule in this Chapter, the provisions of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, (NES-PF) particularly regulations 93 and 94, apply instead of the rule.

For the avoidance of doubt, the NES-PF does not apply to the following activities, and they are therefore subject to the rules in this chapter:

- *Vegetation clearance of indigenous vegetation that occurs before afforestation (see Reg 5(3));*
- *Vegetation clearance of indigenous vegetation within a significant natural area, except that clearance of a forestry track described in Reg 93(2)(d) NES-PF, or incidental damage described in Reg 93(5), are covered by the NES-PF under Reg 93 or 94).*

4. The parties support the above wording in place of:
 - (a) The wording set out in the Section 42A report at paragraphs 5.3.18, 10.3.13 and 10.3.18; and
 - (b) The wording set out in the legal submissions for the Submitter at paragraph 11.
5. For the convenience of the Panel, the *Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017* are available [here](#), and the test of the regulations specifically referred to in the Note is attached to this memorandum.



Asher Davidson
Counsel for the Council



Trish Fordyce
Counsel for the Submitter

APPENDIX 1 – Extracts from Resource Management (National
Environmental Standards for Plantation Forestry) Regulations 2017

**Reprint
as at 1 May 2018**



**Resource Management (National Environmental
Standards for Plantation Forestry) Regulations 2017**
(LI 2017/174)

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry for Primary Industries.

5 Application

- (1) These regulations apply to—
 - (a) afforestation:
 - (b) pruning and thinning to waste:
 - (c) earthworks:
 - (d) river crossings:
 - (e) forestry quarrying:
 - (f) harvesting:
 - (g) mechanical land preparation:
 - (h) replanting:
 - (i) ancillary activities relating to slash traps and indigenous and non-indigenous vegetation clearance:
 - (j) discharges, disturbances, diversions, noise, dust, indigenous bird nesting, and fuel storage and refuelling, which are referred to in the general provisions and conditions in subpart 10 of Part 2.
- (2) The general provisions and conditions in subpart 10 of Part 2 must be complied with in addition to the requirements and conditions in these regulations that apply to the associated plantation forestry activity.
- (3) These regulations do not apply to—
 - (a) vegetation clearance that is carried out before afforestation; or
 - (b) any activities or general provisions and conditions not specified in subclause (1).
- (4) If these regulations do not apply to a particular activity, there may be rules in regional or district plans that apply to that activity.

Indigenous vegetation clearance

93 Permitted activity: territorial authority

- (1) Vegetation clearance of indigenous vegetation associated with a plantation forestry activity is a permitted activity if subclause (2) or (3) is complied with and the clearance does not occur within a significant natural area, except that a clearance of a forestry track described in subclause (2)(d) may occur in a significant natural area.
- (2) Vegetation clearance of indigenous vegetation may occur within an area of a plantation forest if the indigenous vegetation—
 - (a) has grown up under (or may have overtopped) plantation forestry; or
 - (b) is within an area of a failed plantation forest that failed in the last rotation period (afforestation to replanting) of the plantation forestry; or
 - (c) is within an area of plantation forest that has been harvested within the previous 5 years; or
 - (d) is overgrowing a forestry track, if the track has been used within the last 50 years.
- (3) Vegetation clearance of an area of indigenous vegetation located within or adjacent to a plantation forest may be carried out if—
 - (a) the area of indigenous vegetation and the plantation forest are held in the same ownership; and
 - (b) the cumulative clearance does not exceed 1 ha or 1.5% (whichever is the greater) of the total area of indigenous vegetation within or adjacent to the plantation forest in which the clearance is proposed, but excluding any vegetation clearance under subclause (2).
- (4) Incidental damage is a permitted activity and may occur in an area that is within or adjacent to any plantation forest, including a riparian zone.
- (5) In this regulation, **incidental damage** means—
 - (a) damage where the ecosystem will recover to a state where, within 36 months of the damage occurring, it will be predominantly 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 100 m of the indigenous vegetation perimeter length; or
 - (ii) 10 m in continuous length per 100 m of a riparian zone length (with the applicable riparian zone width); or
 - (c) if it occurs in 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).

94 Restricted discretionary activity: territorial authority

- (1) The vegetation clearance of indigenous vegetation is a restricted discretionary activity if regulation 93(2), (3), or (4) is not complied with.

Matters to which discretion is restricted

- (2) Discretion is restricted to—
- (a) the location of the activity;
 - (b) the ecological effects due to—
 - (i) the ecological significance of the indigenous vegetation; or
 - (ii) the location and extent of indigenous vegetation removal; or
 - (iii) the functioning of remaining indigenous vegetation, including edge effects and retention of corridors;
 - (c) the mitigation measures proposed;
 - (d) alternatives to clearance and disturbance of indigenous vegetation;
 - (e) the information and monitoring requirements.

