



# Proposed Marlborough Environment Plan

## Topic 22: Forestry

**Hearing dates:** 3 – 4 December 2018

**S42A Report Writer:** Liz White

**Conflicts of Interest:** None

**Interim decision:** None

*(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)*

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**List of Abbreviations**

ETS	Emissions Trading Scheme
MDC	Marlborough District Council
NESPF	National Environmental Standard for Plantation Forestry
NZCPS	New Zealand Coastal Policy Statement
PMEP	Proposed Marlborough Environment Plan
RMA	Resource Management Act 1991

**Submitter abbreviations**

DOC	Department of Conservation
MFIA	Marlborough Forest Industry Association Incorporated

## Structure of Decisions

1. It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel<sup>1</sup>.
2. The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.
3. Where the PMEP provisions **remain as notified**, it is because:
  - (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or
  - (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or
  - (c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.
4. Where there is a **change to a provision** within the plan it is because:
  - (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or
  - (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or
  - (c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or

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<sup>1</sup> (The only exception to that approach relates to the Noise section of the Nuisance topic where the reasoning and recommendations in the responses to Minutes 54 and 59 may have been adopted, rather than the reasoning and recommendations in the Section 42A Report or the Reply to Evidence report. The reasons for that difference in that topic are dealt with in detail at the commencement of the Noise section of the Nuisance topic decision. In respect of that topic the approach to understanding of the individual submission point decisions addressed in paragraphs 13.3 to 13.5 below should be adjusted accordingly to apply references to the Section 42A Report and/or Reply to Evidence in those paragraphs as being references to the responses to Minutes 54 & 59 for that Nuisance topic.)

- (d) A consequential change has been necessary following on from a decision in either a), b) or c).
5. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.
  6. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.
  7. Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

## National Environmental Standard for Plantation Forestry (NESPF)

### Aligned rules/standards

8. On 1 May 2018, the NESPF came into effect. It provides a set of rules that apply nation-wide to the following activities relating to plantation forestry:
  - afforestation
  - pruning and thinning to waste
  - earthworks
  - river crossings
  - forestry quarrying
  - harvesting
  - mechanical land preparation
  - replanting
  - other ancillary activities.
  
9. The NESPF is directly relevant to the PMEP, because a number of provisions within the PMEP have now been superseded by the NESPF and consideration of other provisions should be made in the context of the regulations in the NESPF. The RMA sets out the relationship between the regulations and standards in the NESPF and district and regional plan rules. This includes the requirement under s 44A RMA for the Council to identify where plan rules duplicate or conflict with the NESPF and remove the duplication or conflict. Section 43B RMA allows for district or regional rules to be more stringent in cases where an NES explicitly states this. In this instance, the NESPF provides for plan rules to be more stringent in a number of circumstances.
  
10. The forestry provisions of the PMEP were publicly notified on 9 June 2016. The NESPF was signed by Order of Council on 31 July 2017 and commenced on 1 May 2018. This made the process of considering the relief requested in submission more complicated than would have normally been the case. The Council undertook an alignment exercise to remove rules in the PMEP that duplicated or conflicted with the NESPF. It also determined which rules were to be retained on the basis of stringency. These processes are clearly set out in the Topic 22 Section 42A Report. The effect of these provisions were that there were rules that received submission that were removed from the PMEP. The submissions on those rules therefore became invalid. Helpfully, the results of the alignment exercise were appended to the Section 42A Report. The specific submission points affected in this way were also identified. This

matter is highlighted to reflect the additional complexity involved in determining this topic. The Panel thanks the report writer for her assistance on this matter and also thank submitters for their perseverance.

### **Matters over which the Council has restricted its discretion**

11. As background information, as of 1 February 2019 two new rules provide MDC with stringency with the following directions as a result of alignment with NESPF:<sup>2</sup>

#### *4.5.3 Plantation forestry planting*

*Matters over which the Council has restricted its discretion:*

##### *4.5.3.1 Effects on Significant Wetlands*

##### *4.5.3.2 Effects of sedimentation*

##### *4.5.3.3 The effects on the values of the Marlborough Sounds Outstanding Natural Feature and Landscape.*

##### *4.5.3.4 Effects on any drinking water supply registered under Section 69J of the Health Act 1956.*

#### *4.5.4 Plantation forestry harvesting*

*Matters over which the Council has restricted its discretion:*

##### *4.5.4.1 Effects on Significant Wetlands*

##### *4.5.4.2 Effects of sedimentation*

##### *4.5.4.3 The effects on the values of the Marlborough Sounds Outstanding Natural Feature and Landscape.*

##### *4.5.4.4 Effects on any drinking water supply registered under Section 69J of the Health Act 1956.*

### **Minute 52 Requests for clarification**

12. The Panel had a number of questions upon which it sought further response from the report writer arising from our initial consideration of Forestry, Topic 22 issues.
13. We queried in Panel Minute 52, Matter A, if any purpose was served by the inclusion of the phrase 'National Environmental Standards for Plantation Forestry 2017' in Standard 3.3.6 and other provisions as recommended to be amended in the Section 42A Report.<sup>3</sup>

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<sup>2</sup> Update 5 Plan Change NES Plantation Forestry, Volume 2, Chapter 4, page 6.

<sup>3</sup> Section 42A Report, paragraph 124.

14. Rule 3.1.6. provides a permitted activity for ‘*Commercial forestry planting and carbon sequestration forestry planting (non-permanent).*’ Standard 3.3.6 sets out the permitted activity standards for those activities.

**Consideration**

15. The Panel considered that as a matter of law all plantation forestry is to be managed by NESPF 2017 which has the status of statutory regulation. We believe that the report writer’s reference to NESPF in the rules and standards does not add to the effect of the rules when stringency is being exercised.<sup>4</sup>
16. The report writer responded to Minute 52:
- The addition of the wording is not part of the changes recommended through the Section 42A Report. Rather, it reflects the wording as amended through the NESPF alignment process.
  - The firm engaged to undertake the alignment exercise sought to make it clear that the rule continued to apply to plantation forestry planting activities as identified in the provisions of the PMEP *in addition* to NESPF. The advice from MDC officers was that it was important to make the distinction to provide clarity to users.
  - The need for the phrase in this particular rule (and other rules) that specifically manage plantation forestry may not be necessary but there is benefit in ensuring that the proposed rules that apply more broadly such as Rule 3.1.13 (Cultivation) and Rule 3.1.14 (Excavation) are examples which continue to apply *in addition* to NESPF.
  - Nevertheless, given the ‘Note’ introduced through the final NESPF alignment exercise to the standards for these activities, the distinction between the Plan provisions and the alignment with the provisions of the NESPF is now sufficiently clear. The phrases referred to in the rule headings that specifically manage forestry activities are no longer necessary. The report writer advised as a result she is therefore comfortable with their removal.<sup>5</sup>
17. The Panel decided that, due to the fact that NESPF was published after the PMEP was advertised and the submission dates identified, it is clear that the time difference between when the two documents were published (PMEP and NESPF) meant that the notice of the alignment provisions as a regulation would subsume the recommended amendments to the Rule 3.3.6 and other provisions.

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<sup>4</sup> Minute 52, page 1.

<sup>5</sup> Memorandum in response to Minute 52, Matter A, page 1.



**Decision**

18. Given the statutory recognition of the NESPF and as part of the alignment process, remove the reference to the NES in the provisions described in schedule 22.1 attached to the decision on this topic.
19. Retain the references to the NES in the provisions described in schedule 22.2 attached to the decision on this topic.
20. As a matter of law, the Panel considers that by statutory regulations all plantation forestry is required to be managed by the NESPF and does not require the reference throughout the PMEP to NESPF. There are also numerous other provisions where a similar inclusion of that phrase has been recommended.<sup>6</sup>

**Commercial Forestry****Request for combination of forestry terms**

21. Ernslaw One seeks to combine the definitions of 'commercial forestry planting', 'carbon sequestration planting (permanent)' and 'carbon sequestration forestry planting (non-permanent)' as it is difficult to differentiate between their purpose at the time of planting.<sup>7</sup>

**Section 42A Report**

22. In terms of combining all the terms as suggested by Ernslaw One, the report writer advised:

*I tend to agree with the submitter that it is difficult to include rules relating to the **planting** of carbon sequestration forestry that differentiate between whether it is permanent or nonpermanent, because this may change after the forestry has been planted. There is also a tension with linking the rules pertaining to carbon sequestration planting with those relating to commercial forestry, because the NESPF applies to the latter but not the former. In my view, it would be more appropriate to delete reference to carbon sequestration forestry planting within the rules applying to commercial forestry and instead amend the permitted rule currently applying to permanent carbon sequestration forestry, [and instead] to remove reference to 'permanent', and similarly - shift reference to carbon sequestration forestry from Rule 3.7.1(a) to 3.7.1(b).<sup>8</sup>*

[Emphasis added]

23. The report writer's recommendations relating to these opinions are to amend Rule 3.1.6 (and the heading of 3.3.6) as follows:

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<sup>6</sup> Section 42A Report, paragraphs 123-126. Panel Minute 52.

<sup>7</sup> Ernslaw One, Peter Weir Evidence, page 3.

<sup>8</sup> Section 42A Report, Reply to Evidence, Definitions, page 1.

*3.1.6. Commercial forestry planting including where managed by the National Environmental Standards for Plantation Forestry 2017, ~~and carbon sequestration forestry planting (non-permanent)~~*

24. Amend Rule 3.1.10 (and the heading of 3.3.10) as follows:

*3.1.10. Conservation planting and carbon sequestration forestry planting ~~(permanent)~~*

25. Amend Rule 3.7.1 as follows:

*3.7.1(a) Commercial forestry planting, ~~and carbon sequestration forestry planting (non permanent)~~ within the coastal environment on land identified as Steep Erosion-Prone Land, that has not previously been planted in lawfully established commercial ~~or carbon sequestration (non-permanent)~~ forestry.*

*3.7.1(b) Woodlot forestry planting and carbon sequestration forestry planting on land identified as Steep Erosion-Prone Land, that has not previously been planted in lawfully established woodlot forestry or carbon sequestration forestry planting.<sup>9</sup>*

#### **Consideration**

26. The Panel is in agreement with the report writer that the submission raises valid issues for consideration. However, the option requested by the submitter of amalgamating definitions is not the preferred option of either the Panel or the report writer. The Panel prefers the approach recommended by the report writer that the relevant rules are amended to ensure that unnecessary complications raised by phraseology such as ‘permanent’ and ‘non permanent’ are removed. The Panel considered the distinction unnecessary. It understood that the distinction was made in an attempt to ensure that people did not use the carbon sequestration forestry enabling rules to effectively plant commercial forestry. The Panel believes that this reflects the purpose and intent of the rules and the circumstances above are a compliance matter.
27. The Panel therefore concluded it was appropriate to remove sequestration from rules managing commercial forestry to avoid confusion between the various activities as follows:
- Remove ‘carbon sequestration forestry (non permanent)’ from 3.1.6, 3.3.6, 3.7.1, 4.7.1, 7.5.1 and 8.5.1 as set out in the Reply to Evidence.<sup>10</sup>
  - Remove ‘(permanent)’ from Rule 3.1.10 as set out in the Reply to Evidence.<sup>11</sup>

<sup>9</sup> Section 42A Report, Reply to Evidence, Definitions, pages 2-3.

<sup>10</sup> Section 42A Report, Reply to Evidence, Definitions, pages 1-2.

<sup>11</sup> Section 42A Report, Reply to Evidence, page 1.

- Do not add 'carbon sequestration forestry planting' to 3.7.1 as this would prevent planting of steep erosion-prone land that would have soil conservation benefits.

#### **Decision**

28. Amend the rules as set out in the consideration above.
29. As a consequence, the definitions of Carbon sequestration forestry planting (permanent) and Carbon sequestration forestry planting (non-permanent) are deleted and the following definition of Carbon sequestration forestry planting is inserted as follows:

**Carbon sequestration forestry planting means the planting and management of areas of shrubs and vegetation the purpose of which is only for carbon sequestration.**

#### **Definition of Commercial Forestry**

30. Several submissions request that 'commercial' forestry be replaced with 'plantation' forestry.
31. Nelson Forests seeks that all reference to 'commercial forestry/forests' be changed to 'plantation forestry/forests', identifying that this is the recognised terminology for planted forests and is consistent with the NESPF<sup>12</sup>. The company states there is no overriding definition of commercial forestry in the PMEP and seeks that 'plantation forestry' is defined as follows:<sup>13</sup>

*Growing trees and removing them from the land, to produce timber and/or fibre, or where the land cover is principally timber tree species. Forest has a corresponding meaning. It includes:*

- *Accessory land preparation*
- *Accessory tracking or roads, landings or other accessory earthworks*
- *Clearing understorey*
- *Harvesting trees (including de-limbing, trimming, cutting to length, and sorting and grading of felled trees*
- *recovery of windfall and other fallen trees*
- *Planting trees*
  - *Replanting trees*
  - *Tree alteration*

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<sup>12</sup> Federated Farmers (425.386, 425.387). Nelson Forests Ltd, Heather Arnold Evidence, paragraphs 6-8.

<sup>13</sup> Nelson Forests Ltd (990.5, .7). Section 42A Report, paragraph 71.

- *Replanting trees*
- *Thinning trees*
- *Accessory vegetation removal*

32. Federated Farmers seeks that the definition of commercial forestry be amended to exclude (inter alia) ‘trees planted for amenity purposes, such as landscape enhancement and animal shelter; all farm shelter belts; erosion control, riparian margin strips; for scientific or research purposes; or where the trees are intended to remain in perpetuity, such as trees contained within a QEII covenant or similar’ and that small scale farm forestry also be excluded.<sup>14</sup>
33. D Hemphill requests that the definition of ‘commercial forestry’ and ‘forestry road’ be aligned with those of the NESPF.<sup>15</sup>

#### **Section 42A Report**

34. In terms of replacing the term ‘commercial forestry’ with ‘plantation forestry’, the report writer was ‘fairly neutral’ but nevertheless accepts there may be benefit in aligning the terminology used in the NESPF to avoid any doubt as to which document may apply. The report writer’s final recommendation is to amend ‘commercial forestry’ to ‘plantation forestry’.<sup>16</sup>
35. The report writer notes that the PMEP already includes a definition of ‘commercial forestry’ (*‘Means indigenous or exotic tree species deliberately established for wood production’*) ... ,<sup>17</sup> so there is no need to provide the extensive, new definition sought by Nelson Forests Ltd.
36. The definition of ‘plantation forest’ in the NESPF is much more expansive than that of the PMEP:

***plantation forest or plantation forestry means a forest deliberately established for commercial purposes, being –***

*(a) at least 1 ha of continuous forest cover of forest species that has been planted and has or will be harvested or replanted; and*

*(b) includes all associated forestry infrastructure; but*

*(c) does not include—*

<sup>14</sup> Federated Farmers (425.385).

<sup>15</sup> D C Hemphill (648.46).

<sup>16</sup> Section 42A Report, Reply to Evidence, page 1.

<sup>17</sup> Section 42A Report, paragraph 74.

- (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*
- (v) long-term ecological restoration planting of forest species; or*
- (vi) willows and poplars space planted for soil conservation purposes<sup>18</sup>*

37. Nevertheless, the report writer agrees, despite stating that the NESPF and PMEP definitions encompass the same matters, that there is benefit aligning the definitions within the PMEP with those used in the NESPF to avoid doubt. She recommends there are several options available to the Panel to achieve the alignment exercise:

- Replace all references within the MEP from ‘commercial forestry’ to ‘plantation forestry’ (including in objectives, policies, methods and explanations), delete the definition of ‘commercial forestry’ from the MEP and replace with the above NESPF definition (or reference to it); or
- Retain references to ‘commercial forestry’ but amend the definition of ‘commercial forestry’ to either replicate the NESPF definition above or refer to it.<sup>19</sup>

38. The report writer’s preference, however, is to refer to ‘commercial forestry’ instead of ‘plantation forestry’ throughout the rest of this topic.

#### **Consideration**

39. The Panel considered that the definition of ‘commercial forestry’ is appropriate to be aligned with the NESPF definition of ‘plantation forestry’. We also considered that the words ‘commercial forestry’ should be replaced with ‘plantation forestry’ throughout the PMEP to avoid confusion.

#### **Decision**

40. The definition of ‘commercial forestry’ is deleted and a new definition of ‘Plantation forestry inserted’ as follows:<sup>20</sup>

*Plantation forestry means ~~indigenous or exotic tree species deliberately established for wood production~~ a forest deliberately established for commercial purposes, being –*

<sup>18</sup> NESPF 2017, pages 10-11.

<sup>19</sup> Section 42A Report, paragraph 75.

<sup>20</sup> Section 42A Report, paragraph 78.

(a) at least 1ha of continuous forest cover of forest species that has been planted and has or will be harvested 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

(v) long-term ecological restoration planting of forest species; or

(vi) willows and poplars space planted for soil conservation purposes

41. All references to ‘commercial forestry’ and ‘commercial forest’ in the PMEP must be changed to ‘plantation forestry’ and ‘plantation forest’ respectively.

#### **Definition of ‘Commercial forestry planting’**

42. The definition of ‘Commercial forestry planting’ within the PMEP is:

*‘means indigenous or exotic tree species deliberately established for wood production. Includes the planting, management and replanting of trees, and the preparation of land for planting.’*

43. Windermere Forests Ltd and Warren Forests Ltd seek that ‘replanting’ is removed from the definition.<sup>21</sup> MFIA requests similarly, stating the definition provides protection of existing use rights under s 10 RMA.<sup>22</sup> MFIA also seeks that the definition be amended to add ‘including excavation’ so that it also provides for excavation as a land preparation tool. Nelson Forests seeks similarly, including an amendment to identify ‘land disturbance’ and ‘excavation’.<sup>23</sup>
44. P G Gilbert raises concerns that as the definition of commercial forestry planting includes replanting, and planting is listed as a discretionary activity within the Coastal Environment Zone, while replanting is listed as permitted, it is not clear if replanting is permitted or discretionary. He therefore seeks that the definition of planting deletes the reference to replanting. In addition, he notes that the definition does not include formation of ‘tracks and

<sup>21</sup> Windermere Forests Ltd (1238.28), Warren Forestry Ltd (282.3).

<sup>22</sup> MFIA (962.121).

<sup>23</sup> Nelson Forests Ltd (990.12).

roads' to provide access to undertake the planting, and seeks that the definition is extended to include: *'and the excavation or filling, or both, to prepare the land for planting or replanting (for example forestry road or forestry track construction or maintenance)'*.<sup>24</sup>

45. Federated Farmers initially sought that the definitions of 'commercial forestry planting' (and 'commercial forestry harvesting') are deleted on the basis that there is no need to have separate definitions for these two activities – rather there should only be one definition of one activity, being 'commercial forestry'.<sup>25</sup> Federated Farmers in evidence reconsidered the request for the deletion of replanting and requested the inclusion of replanting within the commercial forestry planting definition as it does not allow for a case by case assessment in line with existing use rights consideration.<sup>26</sup>
46. Nelson Forests Ltd considers that bundling of replanting and afforestation activities within the PMEP as 'planting' results in the PMEP being difficult to interpret and does not align with the separate management applied to each within the NESPF.<sup>27</sup>
47. Ernslaw One Ltd also considers that the 'planting' rules in the PMEP mix two separate activities of 'afforestation' with 'replanting'. 'Planting' should be replaced with 'afforestation' throughout the rules.<sup>28</sup>

#### **Section 42A Report**

48. The report writer identified the NESPF definition of 'afforestation':
  - (a) *means planting and growing plantation forestry trees on land where there is no plantation forestry and where plantation forestry harvesting has not occurred within the last 5 years; but*
  - (b) *does not include vegetation clearance from the land before planting.*
49. In response to Federated Farmers, the report writer does not agree that it is necessary to remove 'replanting' from the definition of 'planting', nor has the Environment Court (to her knowledge) confirmed that replanting falls within existing use rights (which in any case would only apply to land use under a district rule).
50. Nevertheless, the report writer considers there are some cases where standards applicable to the new planting and replanting should be distinguished as there is a difficulty with the current definitions as they apply within the Coastal Environment Zone rules (discussed

<sup>24</sup> P G Gilbert (1017.1).

<sup>25</sup> Federated Farmers (425.386, .387).

<sup>26</sup> Federated Farmers, Kim Reilly, Reply to Evidence, page 2.

<sup>27</sup> Nelson Forests, Heather Arnold, Reply to Evidence, page 2.

<sup>28</sup> Ernslaw One Ltd, Peter Weir, Reply to Evidence, page 2.

elsewhere). The report writer also disagrees with deleting the definitions of both ‘commercial forestry planting’ and ‘commercial forestry harvesting’ relying only on the definition of ‘commercial forestry’. This does not align with the way the rules in the PMEP manage the two as separate activities, nor would that approach be consistent with the NESPF which similarly manages the two activities separately. The NESPF also includes separate definitions for each – ‘harvesting’ and ‘afforestation’.

51. In her reply to evidence and in response to the evidence of Federated Farmers, Nelson Forests and Ernslaw One Ltd, the report writer was relatively neutral for change as long as the two activities are separated out, with appropriate standards applied to replanting. She does not agree that references to planting should be replaced with ‘afforestation’ as then no standards would apply to replanting.
52. Similarly, because existing use rights only apply to district plan rules, the report writer does not agree that simply removing the reference to replanting from the definition of planting is appropriate, as to do so would remove the regional plan rules applicable to replanting (and the district rules as they apply to replanting activities that do not have existing use rights).
53. Nevertheless, the report writer does accept that there is an advantage in aligning the management of these activities with that used in the NESPF, i.e. treating them as two separate activities as in reality, plan users referring to these rules are likely to be familiar with the distinction in the NESPF.<sup>29</sup>
54. The report writer recommended this be achieved by an amended version of the NESPF definition which combined paragraphs (a) and (b) of that definition into a new paragraph (a) with a suggested further new paragraph (b), as follows:

*Means: (a) planting and growing commercial forestry trees on land where there is no commercial forestry and where commercial forestry harvesting has not occurred within the last 5 years; but does not include vegetation clearance from the land before planting; and*

*(b) replanting commercial forestry*

#### **Consideration**

55. In Minute 52 the Panel noted that the report writer recommended the adoption of the NESPF definitions for each of ‘planting’ and ‘replanting’ as separate activities, but has included in the

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<sup>29</sup> Section 42A Report, Reply to Evidence, page 2.



recommended wording for the definition of ‘planting’ to include ‘replanting commercial forestry’ at paragraph 126 of the Section 42A Report.

56. We also considered in Minute 52, identified earlier, that the discussions of the report writer identified a number of provisions and several inconsistencies in the recommendations under the heading ‘Definition – Commercial Forestry Planting’, namely between paragraphs 119 and 121 and the recommendation (b) in paragraph 126.
57. There appears to be an inconsistency in those two approaches and the Panel sought the report writer’s clarification as to whether her analysis overlooked something.
58. The report writer’s reply to the question in the minute was ‘to ensure that the definitions within the PMEP and those within the NESPF aligned in a broad sense’. The recommendation at the stage it was made (before the NESPF was finalised) did not extend to amending the approach taken in the PMEP to having rules that both manage what ‘afforestation’ is in the NESPF, as well as ‘replanting’ within the same rule. In order to continue this management approach the definition of planting in the PMEP was recommended to apply to afforestation as well as replanting.<sup>30</sup>
59. Notwithstanding this, following various discussions by submitters on this matter, the report writer recommended separating out the management of these two activities.<sup>31</sup> As a result of this, a consequential change should be made wording for the definition of plantation/commercial forestry planting to remove part (b) from the report writer’s recommended version. The definition would therefore only read as follows:

*Means: planting and growing commercial forestry trees on land where there is no commercial forestry and where commercial forestry harvesting has not occurred within the last 5 years; but does not include vegetation clearance from the land before planting*

60. The issue of replanting as a consequence will require a separate definition for ‘plantation forestry replanting’.
61. As a result of these interchanges the Panel considered it was appropriate to amend the definition of ‘commercial forestry planting’ to:

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<sup>30</sup> Response to Minute 52, pages 1-2.

<sup>31</sup> Section 42A Report, Reply to Evidence, pages 2-3.

- Align with the NESPF<sup>32</sup> but not to include the recommended (b) as set out in response to Minute 52 and to replace the term ‘commercial forestry planting’ with ‘plantation forestry afforestation’.
- Introduce a new definition of ‘plantation forestry replanting’ to reflect the NESPF definition.

**Decision**

62. Delete the definition of ‘commercial forestry planting’ and insert a new definition of ‘plantation forestry planting’ as follows:

*Plantation forestry afforestation means planting and growing plantation forestry trees on land where there is no plantation forestry and where plantation forestry harvesting has not occurred within the last 5 years; but does not include vegetation clearance from the land before planting.*

63. Delete the definition of ‘commercial forestry replanting’ and insert a new definition of ‘plantation forestry replanting’ as follows:

*Plantation forestry replanting means the planting and growing of plantation forestry trees on land less than 5 years after plantation forestry harvesting has occurred*

**Standard 3.3.6**

**Commercial forestry planting and carbon sequestration planting (non-permanent)**

**Consideration**

64. As a consequence of the previous amendment to Rule 3.3.6 (as ‘replanting’ is no longer covered by ‘planting’), it is necessary to include a new standard in 3.3. for replanting as set out in the Reply to Evidence.<sup>33</sup>
65. The Panel considered that reference to the NESPF was unnecessary. The prefix ‘re’ should be inserted before ‘planting’ in the two recommended standards.
66. This standard requires a corresponding rule in 3.1.

**Decision**

67. Insert a permitted activity rule in 3.1.x as follows:

*3.1.x Plantation forestry replanting*

68. Insert a new standard for replanting is as follows:<sup>34</sup>

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<sup>32</sup> As set out in the S42A Report.

<sup>33</sup> Section 42A Report, Reply to Evidence, page 3.

<sup>34</sup> Section 42A Report, Reply to Evidence, page 3.

3.3.x Plantation forestry replanting

3.3.x.1 Replanting must not be in, or within:

(a) 8m of a Significant Wetland;

(b) an Afforestation Flow Sensitive Site.

3.3.x.2 Replanting must not be within such proximity to any abstraction point for a drinking water supply registered under section 69J of the Health Act 1956 as to cause contamination of that water supply.

**Prohibited Rule 3.7.3 – Carbon sequestration forestry (permanent) harvesting**

69. PF Olsen Ltd considers that the rule is out of scope as the decision to harvest what was intended to be permanent carbon sequestration forestry has two components:

- The first being the Emissions Trading Scheme (ETS)/Afforestation Grant Scheme rules or other covenants, ‘none of which are the Council’s business and are covered by comprehensive legal rule structures.’
- The second component is the other environmental effects, which they consider should be aligned with the other forestry rules within the PMEP and the NESPF.<sup>35</sup>

70. Federated Farmers also opposes the rule, stating that it is inconsistent with the ETS, which provides for harvesting and replanting, or harvesting and not replanting but incurring a deforestation liability. Federated Farmers consider that they should not be prohibited from harvesting by the PMEP when they are allowed to do this (subject to conditions) under the ETS.<sup>36</sup>

71. Nelson Forests Ltd also opposes the rule, as it considers there may be times when it is desirable or necessary to harvest this type of forest in response to force majeure events. The company considers this is a commercial decision whether to harvest these forests, not a resource management issue.<sup>37</sup>

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72. The report writer agrees with the submitters that this rule does not appear to be addressing a resource management issue, in that the effects relating to harvesting should be managed in the same way, regardless of the reasons for which the planting was established.

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<sup>35</sup> PF Olsen Ltd (149.44).

<sup>36</sup> Federated Farmers (425.618).

<sup>37</sup> Nelson Forests Ltd (990.120).

73. The report writer also noted the distinction between carbon sequestration forestry definitions is:<sup>38</sup>

*Carbon sequestration forestry planting (permanent) means a planting that will never be harvested.*

*Carbon sequestration forestry planting (non-permanent) means a planting that may be harvested. For clarity, a carbon sequestration forestry planting (non-permanent) becomes commercial forestry harvesting when it is harvested.*

74. In the report writer's opinion the difficulty with these definitions is that at the point where harvesting is contemplated, it could be argued that the planting is therefore not permanent and is instead non-permanent, making the rule somewhat 'null in effect'. Her recommendation is that the rule be deleted.<sup>39</sup>

#### **Consideration**

75. To provide some insight into the background of what the Panel considered with respect to Rule 3.7.3, we note that Rule 3.7.1 prohibits plantation forestry or carbon sequestration forestry where it is on land identified as steep erosion-prone land that has not previously been planted in lawfully established forestry. The application of this rule has been reduced as a result of alignment with the NESPF so that it applied only to the coastal environment in relation to giving effect to Policy 22 of the NZCPS (which relates to sedimentation in the coastal marine environment) that the rule can be more stringent in the NESPF.
76. The Panel considered that effects of harvesting are the same regardless of why the planting was established. The deletion is also inconsistent with the ETS.
77. We consider the appropriate amendment is to apply the prohibited activity rule to harvest on steep erosion-prone land to avoid erosion effects that potentially arise from forestry tracking and land clearance involved in harvesting.

#### **Decision**

78. Rule 3.7.3 is amended to read:

*3.7.3 - Carbon sequestration forestry (~~permanent~~) harvesting on steep erosion prone land.*

<sup>38</sup> Section 42A Report, paragraph 190.

<sup>39</sup> Section 42A Report, paragraphs 181-191, 208.

**Definition of ‘Commercial forestry harvesting’**

79. ‘Commercial forestry harvesting’ is defined in the PMEP as follows:

*means the felling and removal from the land of trees, for the purposes of commercial forestry, and includes:*

*(a) excavation or filling, or both, to prepare the land for harvesting (for example, skid, forestry road or forestry track construction or maintenance);*

*(b) de-limbing, trimming, cutting to length, and sorting and grading of felled trees;*

*(c) recovery of windfall and other fallen trees;*

*but does not include the transportation of the trees from the land or the processing of timber on the land.*

80. A number of submitters seek that the definition of commercial forestry harvesting is amended so that it does not exclude the transportation of trees from the land, or raise more general opposition that the current PMEP framework currently requires resource consent for carting of logs. Reasons for this include that the exclusion negates the over-riding part of the definition which relates to removal of trees from the land.<sup>40</sup>

81. Two submitters seek that the definition be amended to include the management of the forest over the harvesting period (as included in the definition of commercial forestry planting) and seek that it provides for the maintenance of infrastructure post-harvest.<sup>41</sup> Nelson Forests also seeks that the definition be amended to clearly state that the activity is provided for under regional council functions.

82. Windermere Forests Ltd also seeks that clause (a) of the definition is deleted so that earthworks are uncoupled from harvesting.<sup>42</sup>

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83. It is not clear to the report writer what the management of the forest over the harvesting period related to in terms of the Council’s functions under the RMA that is not otherwise covered in the definition, nor does she consider that it is appropriate to include the maintenance of infrastructure after harvesting, given that this does not relate to the actual activity of harvesting trees. Further, the report writer does not agree that it is appropriate for a definition to state that it relates to a Council function, as the relevant rules identify whether the rule controlling the activity is a regional or district council rule (or both). Her

<sup>40</sup> Section 42A Report, page 38.

<sup>41</sup> MFIA (962.118, 962.119), Nelson Forests Ltd (990.8, 990.10).

<sup>42</sup> Windermere Forests Ltd (1238.28).

recommendation is the definition of ‘commercial forestry harvesting’ is amended to refer to or replicate the NESPF definition.<sup>43</sup>

**Consideration**

84. The Panel considers it is appropriate to align with the NESPF definition of ‘harvesting’ rather than simply refer to the definition because of the importance of the activity to Marlborough at large. Its inclusion here provides ease of reference to the user.

**Decision**

85. The definition of ‘commercial forestry harvesting’ is deleted and a new definition for ‘plantation forestry harvesting’ is inserted as follows:

**Plantation forestry harvesting** *means felling trees, extracting trees, thinning tree stems and extraction for sale or use (production thinning), processing trees into logs, or loading logs onto trucks for delivery to processing plants; but does not include:*

*(i) Milling activities or processing of timber; or*

*(ii) Clearance of vegetation that is not plantation forestry trees.*

**Rule 4.5.5**

**Restricted Discretionary Activities – consequential change**

86. The definition of ‘Plantation [notified as commercial] forestry harvesting’ has been amended as shown above.

87. ‘Earthworks’ is defined in the NESPF as follows:

*earthworks—*

*(a) means disturbance of the surface of the land by the movement, deposition, or removal of earth (or any other matter constituting the land, such as soil, clay, sand, or rock) in relation to plantation forestry; and*

*(b) includes the construction of forestry roads, forestry tracks, landings and river crossing approaches, cut and fill operations, maintenance and upgrade of existing earthworks, and forestry road widening and realignment; but*

*(c) does not include soil disturbance by machinery passes, forestry quarrying, or mechanical land preparation*

88. MFIA<sup>44</sup> and Nelson Forests Ltd<sup>45</sup> seek that the definition of ‘commercial forestry harvesting’ be amended to include the management of the forest over the harvesting period (as included in

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<sup>43</sup> Section 42A Report, page 41.

the definition of '~~commercial~~ plantation forestry planting'). Windermere Forests Ltd seeks that (a) is deleted so that earthworks are uncoupled from harvesting.<sup>46</sup>

89. Another submitter considered that inclusion of earthworks within the definition of harvesting would cause confusion for the plan users compared to the NESPF where earthworks are managed separately to harvesting. Delete earthworks from harvesting in the PMEP and include the NESPF definitions.<sup>47</sup>

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90. The report writer recommends that the definition of 'forestry harvesting' is amended to refer to or replicate the NESPF.
91. Various parties gave evidence that if earthworks are removed from the definition of harvesting (which is supported), it is necessary to include the NESPF definition in the PMEP and related standards. If the definition of plantation forestry harvesting is replaced with the NESPF definition then the outcome will be that earthworks within 8 metres of a significant wetland, for example, would be permitted.<sup>48</sup>
92. The report writer's understanding is that while it was intended that the harvesting rules within the PMEP would provide a one-stop shop for earthworks associated with harvesting (and hence inclusion of earthworks within the definition), there was not a corresponding exclusion for harvesting from the general rules that might otherwise apply (for example, excavation rules). Therefore, the general rules still capture earthworks associated with forestry, to the extent that these rules can be retained in relation to their application to forestry. However there may be a gap between the consideration of these general rules in previous topics, and specific consideration of how they relate to forestry activities post-NES alignment.
93. In the report writer's view there is no need to add the definition of earthworks from the NESPF unless there are additional rules to be included in the PMEP specific to managing earthworks associated with forestry.<sup>49</sup>

#### **Consideration**

94. The Panel was conscious that for the first rotation of plantation forest preparatory works are required to prepare the forestry block for subsequent harvest. In particular, extensive tracking

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<sup>44</sup> MFIA (962.118).

<sup>45</sup> Nelson Forests Ltd (990.8, .10).

<sup>46</sup> Windermere Forests (1238.28).

<sup>47</sup> Ernslaw One Ltd, Peter Weir Evidence, Definitions 3, page 5.

<sup>48</sup> Nelson Forests Ltd, Heather Arnold Evidence, paragraphs 43-49.

<sup>49</sup> Section 42A, Reply to Evidence, pages 3-4.

and roading is typically required. Those preparatory works expose the soil surface and, where this occurs on steep slopes, creates the potential for soil erosion.

95. During the hearing, the Panel heard evidence regarding the potential for erosion in the Marlborough Sounds and the serious sedimentation consequences that flow from that erosion. As it stands, those preparatory works could be undertaken as a permitted activity under both the Plan and the NESPF. Having heard the evidence, particularly from Mr Don Miller, the Panel felt that it was necessary to exercise stringency not only for the planting and harvesting of plantation forest but also for excavation and filling to construct and maintain forestry roads, forestry tracks or skid sites.
96. These earthworks should not be managed as part of commercial forestry harvesting. Under the heading 4.5 Restricted Discretionary Activities the Panel considered that to address the gap identified by the report writer in respect of earthworks in the general rules, it is necessary to add a new restricted discretionary activity standard to the Coastal Environment Zone rules.
97. Managing the potential erosion and sediment effects of all activities involved with plantation forestry (planting, preparatory works and harvesting) ensures that the management applied through consenting processes will be integrated. The Panel in making decisions on other topics has determined that integrated management is important in the coastal environment of the Marlborough Sounds.

#### **Decision**

98. A new Restricted Discretionary Activity is inserted as 4.5.5 as follows.

Rule 4.5.5 – Excavation and filling to construct or maintain forestry roads, forestry tracks or skid sites.

Matters over which the Council has restricted its discretion:

a) effects of sedimentation;

b) reduction of sediment loadings in runoff;

c) effects on the values of Outstanding Natural Features and Landscape

d) effects on Significant Wetlands;

e) effects on any drinking water supply regulation under Section 69J of the Health Act 1956.



99. Add standard 4.3.13.x, as follows:

*Excavation must not be associated with the construction or maintenance of forestry roads, forestry tracks or skid sites.*

100. Add standard 4.3.15.x as follows:

*Filling must not be associated with the construction or maintenance of forestry roads, forestry tracks or skid sites.*

## **Replanting adjacent to the coastal marine area in the Marlborough Sounds**

### **Rule 4.1.6 and Standard 4.3.6**

#### **Commercial forestry replanting**

101. DOC<sup>50</sup> and other submitters oppose the permitted status for replanting in the Marlborough Sounds' coastal environment, with DOC stating that '*appropriate buffers should be required to ensure sedimentation effects of future harvesting activities on adjacent waterways and the CMA is not significant. DOC considers it appropriate that the activity requires resource consent as a discretionary activity so that the potential for rivers to be used as conduits for sediment ...*'. Other submitters from a similar view point sought prohibited activity status. At the other end of the spectrum forestry industry submitters supported permitted activity status.

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102. The report writer recommended that a controlled activity status from 30 metres to 200 metres was appropriate to ensure control measures by way of condition could be imposed to manage any potential adverse effects of sedimentation. Beyond 200 metres permitted activity status would apply. Within 30 metres of the coastal marine area the activity status would be discretionary under Rule 4.6.12.

#### **Consideration**

103. The Panel noted the report writer's concern that permitted activity status did not adequately address in all cases the risk of potential adverse effects of sedimentation in the Sounds, which the Panel has in various places in its decisions identified as being a major concern.
104. The Panel acknowledges that existing use rights do exist for replanting but they do not override the obligation to control specific identified adverse effects such as sedimentation effects on the ecology of the Marlborough Sounds. Nelson Forests<sup>51</sup> acknowledged '*that forests that were legally established have existing use rights under Section 10. Regional rules may impact on these rights only when there is an evidence issue to address.*' The evidence

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<sup>50</sup> 479.220, 479.221

<sup>51</sup> 990.129

relevant to this issue is the sedimentation effect that the Panel considers is significantly adverse to the ecology of the Marlborough Sounds. The Section 42A Report identifies that the report of Dr Ulrich<sup>52</sup> outlined *‘that sedimentation arises from harvesting activities (and in particular, after harvesting and before the establishment of new planting) and identifies the subsequent ecological effects of fine sediment on coastal ecosystems.’*

105. Policy 22(3) NZCPS requires:

*Control the impacts of vegetation removal on sedimentation including the impacts of harvesting plantation forestry.*

106. The Panel accepts the recommendations of the report writer for a gradation in activity status from the coastal marine area inland for a distance of 200 metres and beyond. The proposed controlled activity rule is determined to be a district and regional rule. The regional rule is imposed under Section 30(1)(c)(i), (ii) and (iii) RMA.

**Decision**

107. Insert a new Controlled Activity rule as follows:

[R, D]

4.4.3 Plantation forestry replanting between 30 metres and 200 metres of the coastal marine area

Matters over which the Council has reserved control:

4.4.3.1 The location of planting, including areas of permanent planting

4.4.3.2 Effects of sedimentation, including those likely to arise from harvesting, and measures proposed to avoid or mitigate these effects

108. Amend Standard 4.3.6.1(c) by deleting ‘30’ and replacing with ‘200’ so that the standard reads as follows:

*4.3.6.1. Replanting must not be in, or within:*

*(a) 8m of a river (except an ephemeral river) or lake;*

*(b) 8m of a Significant Wetland;*

*(c) ~~30~~200m of the coastal marine area.*

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<sup>52</sup> Ulrich, S. C. (2015). Mitigating Fine Sediment from Forestry in Coastal Waters of the Marlborough Sounds. MDC Technical Report No: 15-009, ISBN: 978-1-927159-65-1.

**Rule 4.5.3 (Post NESPF alignment)****Commercial forestry planting**

109. The Section 42A Report recommends that Rule 4.5.3 as inserted in the alignment exercise in respect of restricted discretionary activity standards and is amended to include in parentheses the words *'(excluding commercial forestry replanting that meets permitted activity standards)'*.
110. The Panel however concluded in Minute 52, Matter C, to the report writer<sup>53</sup> that, as the matters applied by Rule 4.5.3 are restricted discretionary activity matters only, then as a matter of law it would seem that these matters cannot apply to permitted activities. We questioned that if that is correct it would appear the words in parentheses serve no purpose.

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111. The report writer identified in her response that the words in the restricted discretionary rule 'cannot apply to permitted standards, [that this] is not the intention of the wording'. Its purpose was to make clear that Rule 4.5.3 would not apply to planting (which at that time was recommended to include both afforestation and replanting and met the permitted standards in the rule). Without that phrase, the restricted discretionary activity Rule 4.5.3 would have applied to replanting making Rule 4.3.6 redundant. Regardless, as a consequence of separating out afforestation and replanting, the definition of plantation/commercial forestry planting should also exclude replanting. Therefore, Rule 4.5.3 would no longer apply to replanting in any case. If the Panel agrees with the recommendation to separate the activities and to subsequently amend the definition it follows that Rule 4.5.3 should be amended to remove the words in parentheses (commercial forestry replanting) – that activity does not meet the standards in 4.3.6. Non-compliance would then default to a full discretionary activity under Rule 4.6.1.
112. But this does not meet applicable standards in the NESPF. This development would extend the Council's consideration to matters beyond those for which the Council can exercise stringency under the NESPF Regulation 6 (that is, the same for which the NESPF alignment exercise amended Rules 4.6.3 to 4.6.4 to be restricted discretionary rather than full discretionary).
113. Therefore, if the Panel agrees with the other recommendations, it follows that post alignment a fully consequential change to Rule 4.5.3 should read as follows:<sup>54</sup>

*Plantation forestry planting or plantation forestry replanting that is not provided for as a Permitted Activity.*

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<sup>53</sup> Minute 52, page 2.

<sup>54</sup> Response to Panel Minute 52, Matter C, page 2.

**Consideration**

114. The consequential effect of separating planting and replanting is that non-compliance should not default to full discretionary due to Regulation 6. The wording should be consistent with the default discretionary rule that does not meet applicable standards.

**Decision**

115. Add reference to plantation forestry replanting in Rule 4.5.3 as follows:

~~Commercial-Plantation forestry planting or plantation forestry replanting that is not provided for as a Permitted Activity or a Controlled Activity.~~

<b>Schedule 22.1</b>	
Rule 3.1.6	3.1.6 Commercial forestry planting including where managed by the National Environmental Standards for Plantation Forestry 2017, and carbon sequestration forestry planting (non-permanent).
Rule 3.1.7	3.1.7 Commercial forestry harvesting including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 3.1.11	3.1.11 Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017
Rule 3.1.13	3.1.13 Cultivation including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 3.1.14	3.3.14. Excavation, including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 4.1.10	4.1.10. Indigenous vegetation clearance, including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 4.1.12	4.1.12 Cultivation including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 4.1.13	4.1.13. Excavation, including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 7.1.9	7.1.9 Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 7.1.11	7.1.11. Excavation or Filling, including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 8.1.12	8.1.12. Excavation or filling, including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 19.1.5	19.1.5 Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 19.1.7	19.1.7. Excavation, including where managed by the National Environmental Standards for Plantation Forestry 2017 as earthworks.
Rule 20.1.5	20.1.5. Excavation or filling, including where managed by the National Environmental Standards for Plantation Forestry 2017 as earthworks.
Rule 22.1.9	22.1.9 Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017.

<b>Schedule 22.2</b>	
Rule 3.1.12	3.1.12 Non-Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 4.1.11	4.1.11. Non-indigenous Vegetation Clearance, including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 7.1.10	7.1.10 Non-Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 19.1.6	19.1.6 Non-Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 20.1.7	Vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017.
Rule 22.1.7	22.1.7. Excavation, including where managed by the National Environmental Standards for Plantation Forestry 2017 as earthworks.
Rule 22.1.10	22.1.10 Non-Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017.