

Form 5

SUBMISSION ON PUBLICLY NOTIFIED PROPOSAL FOR POLICY STATEMENT OR PLAN, CHANGE OR VARIATION

Clause 6 of Schedule 1, Resource Management Act 1991

To Timaru District Council

Name of Submitter: Port Blakely Limited (Port Blakely)

- 1 This is a submission on the Proposed Timaru District Plan (the **Proposed Plan**)
- 2 Port Blakely could not gain an advantage in trade competition through this submission.
- 3 The specific provisions of the Proposed Plan that Port Blakely's submission relates to and the reasons for Port Blakely's submission are set out in **Appendix A** and **Appendix B** below.
- 4 Port Blakely's submission relates to the whole Proposed Plan. The general and specific reasons for Port Blakely's relief sought in **Appendix B** are set out in **Appendix A**.
- 5 Port Blakely seeks the following decisions from the local authority:
 - 5.1 Grant relief as set out in **Appendix A and B**;
 - 5.2 Grant any other similar relief that would deal with Port Blakely's concerns set out in this submission.
- 6 Port Blakely wishes to be heard in support of the submission.
- 7 If others make a similar submission, Port Blakely will consider presenting a joint case with them at a hearing.

Signed for and on behalf of Port Blakely Limited by its solicitors and authorised agents Saunders & Co.



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Partner
15 December 2022

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APPENDIX A

Overview

- 1 Port Blakely Limited (Port Blakely) welcomes the opportunity to submit on the Proposed Timaru District Plan (the Proposed Plan).
- 2 Port Blakely manages 7,179 ha throughout the Timaru District. The location of its forests is shown in **Appendix C**.
- 3 The National Environmental Standards for Plantation Forestry (NES-PF) provide a nationally consistent set of provisions to manage eight core plantation forestry activities that cover the full forestry life cycle, as well as three ancillary forestry activities and general provisions that apply to all plantation forestry activities.
- 4 The RMA contains provisions designed to address duplication and conflict between National Environmental Standards (NES) and local planning instruments. Some of the provisions in the Proposed Plan do not comply with requirements regarding the jurisdiction and justification for local rules that are more stringent than a NES.
- 5 Where the NES-PF permits an activity, the RMA allows proposed local plans to specify additional terms and conditions for that permitted activity.¹ However, these extra terms and conditions must relate to effects which are not covered by the NES-PF. If the plan's terms or conditions deal with effects which are the same, the terms or conditions in the NES-PF prevail.
- 6 Summary of the main points of the submission
 - 6.1 Remove or amend rules stricter than the NES-PF that do not meet the jurisdiction, nor the justification tests in the RMA.
 - 6.2 Remove or amend objectives, policies and other rules in the Proposed Plan for the reasons stated in Appendix B according to the relief sought by Port Blakely.
 - 6.3 The requirements of s32(4) RMA have not been satisfied with respect to the Proposed Plan provisions rules addressed in Appendix B.
- 7 Kindly refer to **Appendix B** for specific relief sought by Port Blakely in respect to the Proposed Plan

About Port Blakely Limited

- 8 Port Blakely is a member of the New Zealand Forest Owners Association and has internationally recognised certification for responsible forestry practices across all of its forests since 2003. Port Blakely is committed to a strong health and safety culture across their staff and contractors. Port Blakely seek to be good stewards of their land by embracing conservation agreements which enhance fish and wildlife habitats. They also encourage responsible forest management and are on-board with forest certification schemes such as the Forest Stewardship Council and the Sustainable Forestry Initiative. Port Blakely's commitment to positive environmental practices in the Canterbury region is proven with examples such as an invitation to be a member of the Timaru District Council Biodiversity Steering Group and

¹ RMA Section 43A(5)(a)(b)&(c).

the significant involvement and support of the South Canterbury Long-Tailed Bat project. Port Blakely acknowledges its forests hold significant environmental, historic and recreational values in some areas and are privileged to be in a position to protect and where possible enhance those values with responsible forestry practices.

The legal framework

- 9 The RMA legal framework and how it relates to NES and district plans can be summarised as follows.
- 9.1 A NES will prevail over local rules (district or regional rules) where the NES and the local rules deal with the effects of the same activity.²
- 9.2 Local authorities must address any duplication or conflict between existing local rules and a NES by completing a so-called alignment exercise and amend the district or regional plan accordingly.³
- 9.3 Local rules can be more stringent than a NES, where the NES expressly provides for greater stringency, otherwise known as the jurisdiction test. With respect to district plans, local rules can be more stringent than the NES-PF if (relevantly):
- (a) The rule gives effect to an objective developed to give effect to the National Policy Statement for Freshwater Management (NPS-FM);⁴ and
- The rule provides for the protection of –
- (b) Outstanding natural features and landscapes (ONL) from inappropriate use and development,⁵ or
 - (c) Significant natural areas (SNAs).⁶
- 9.4 If a local authority intends to propose a local rule that is more stringent than a NES, the local authority must complete an evaluation that examines whether the restriction is justified in the circumstances of each region or district in which the restriction would have effect.⁷ This is known as the justification test, also known as the section 32(4) analysis.

The National Environmental Standard for Plantation Forestry

- 10 As mentioned above in paragraph 3, the NES-PF provides a nationally consistent set of provisions which cover the full lifecycle of forestry operations.
- 10.1 The NES-PF includes comprehensive permitted activity standards which are more targeted and specific to plantation forestry activities than existing regional and district plan rules. They are deliberately comprehensive and robust to ensure they do not permit an activity with significant adverse effects.
- 10.2 A key driver for the NES-PF was to address unwarranted variation across regions and districts in the management of plantation forestry under the RMA. This variation was

² RMA section 43A(5)(c)

³ RMA section 44A

⁴ Reg 6(1)(a) NES-PF

⁵ Reg 6(2)(a) NES-PF

⁶ Reg 6(2)(b) NES-PF

⁷ RMA section 32(4)

creating significant operational and regulatory uncertainty for the forestry industry and leading to uncertain and inconsistent environmental outcomes.

This is reflected in the policy objectives of the NES-PF, which is to:

(a) Maintain or improve the environmental outcomes associated with plantation forestry activities nationally; and

(b) Increase efficiency and certainty in the management of plantation forestry activities.⁸

10.3 The jurisdiction and justification tests set out in reg. 6(2) of the NES-PF and s32(4) RMA place legal constraints on the ability of the District Council to promote rules that are more stringent than the NES-PF.

11 The NES-PF regulations that overlap with proposed rules in the Proposed Plan are afforestation, earthworks, quarrying, replanting and indigenous vegetation clearance. These NES-PF regulations are summarised at **Appendix D**.

Parts of the Proposed Plan which are more stringent than the NES-PF

12 Sites of Significance to Maori (SASM)

12.1 SASM chapter regulates activities carried out in sites of significance to Maori. The sites of significance are indicated as an overlay on the planning maps and relate to areas known as wahi taoka, wahi tapu, wai taoka and wai tapu and cover a significant area of the Timaru District.

Does the rule meet the jurisdiction test?

12.2 The Rule SASM-R3 only permits clearance of indigenous vegetation within SASM under a limited set of circumstances. The rules in this section are more stringent than the indigenous vegetation clearance rules under the NES-PF. This is because there is no distinction made between indigenous vegetation that is present on the site before an area is afforested or indigenous vegetation which has regrown after afforestation.

The NES-PF allows indigenous vegetation clearance if it is associated with a plantation forestry activity and complies with regulations 93(2) & (3).

District Council rules can be more stringent than NES-PF rules regulating indigenous vegetation clearance, but only in relation to Outstanding Natural Landscapes (ONLs), SNA's and objectives developed to give effect to the National Policy Statement for Freshwater Management (NPS-FM).

The areas identified as SASM could come inside the jurisdiction of regulation 6(1)(a), if their protection is necessary for the Mana o te Wai, a central concept underpinning the NPS-FM. These include areas which protect mahinga kai and cultural traditions connected to water ways. The s.32(4) Report on Sites and Areas of Significance to Maori (SASM Report) issued by the Timaru District Council, indicates that one of the objectives of the SASM rules is the sustainability of ecosystems supporting taoka species and mahinga kai resources.⁹ In addition, under the concept of *ki uta ki tai*¹⁰,

⁸ [National Environmental Standards for Plantation Forestry | NZ Government \(mpi.govt.nz\)](https://www.mpi.govt.nz/national-environmental-standards-for-plantation-forestry/), last accessed 5 December 2022.

⁹ Timaru District Plan Review: Report on Sites and Areas of Significance to Maori, p.26.

¹⁰ Translate as 'from the mountains to the sea'. *Ki uta ki tai* relates to Policy 3 of the NPS-PF, where freshwater is managed in an integrated way.

mountains, river catchment zones and their tributaries also come under the protection of the NPS-FM. Based on the above reasons, the SASM-R3 meets the jurisdiction test, as it gives effect to an objective developed to give effect to the NPS-FM.

Does it meet the justification test?

- 12.3 There is doubt as to whether the rules are justified. The SASM Report states the effects of forestry on cultural heritage are not addressed by the terms and conditions in the NES-PF. Therefore, section 42A(b) of the RMA should apply. This section allows terms and conditions in local plans to be different from terms and conditions in NES, but only in relation to effects of activities which are not dealt with in the NES.

When looking at the effects of plantation forestry on cultural heritage, the SASM Report indicates those effects as a reduction in water flow through afforestation¹¹ and afforestation itself.¹² The effects of afforestation are regulated by the NES-PF¹³ and the hydrological effects of afforestation are regulated by the Canterbury Land and Water Regional Plan (CLWRP).¹⁴ Therefore, s.43A(c) should apply and the terms and conditions in the NES-PF and the CLWRP should prevail.

- 12.4 Submission in relation to rules in the Proposed Plan:

- (a) Rule SASM-R3 should distinguish between indigenous vegetation that is cleared prior to afforestation and indigenous vegetation which has regrown after afforestation of a site.
- (b) Rule SASM-R3 should permit the clearance of indigenous vegetation associated with plantation forestry activities, provided it complies with reg. 93(2) & (3) of the NES-PF.
- (c) Rule SASM-R3 should be amended to refer to the disturbance of significant indigenous vegetation, rather than disturbance of indigenous vegetation.
- (d) The criteria used to assess the significance of indigenous vegetation should reflect the criteria contained in the Proposed National Policy Statement for Indigenous Biodiversity.¹⁵
- (e) Rule SASM-R3 should be amended so the matters of discretion for a restricted discretionary activity are the same as those stated in reg.94(2) NES-PF.
- (f) Rule SASM-R8 should only apply to forestry earthworks and forest quarrying activities, not to afforestation or replanting and should impose a buffer around these sites of 10 or 20 m, not designating the whole title as non-complying.

13 Indigenous vegetation clearance

13.1 Rules related to indigenous vegetation clearance

Rules which regulate the clearance of indigenous vegetation are found in several different chapters within the Proposed Plan. They include the Ecosystem and

¹¹ Ibid., p.53.

¹² Ibid., p.55.

¹³ NES-PF Part 2, Subpart 1.

¹⁴ CLWRP Rule 5.73, and Plan Change 7 to the CLWRP Rules 5.189 & 5.190

¹⁵ Proposed National Policy Statement for Indigenous Biodiversity, Appendix 1: Criteria for identifying areas that qualify as significant natural areas, p.31.

Indigenous Biodiversity chapter, the SASM chapter (as discussed above) and the Natural Character chapter. Indigenous vegetation rules can be broken down into two different categories. Those which relate to matters of national importance, such as SNAs and those which relate to sensitive areas.

13.2 Do they meet the jurisdiction test?

The Proposed Plan imposes stricter standards than the NES-PF in relation to the clearance of indigenous vegetation in SNAs.

Reg.6(2)(b) NES-PF allows district plans to contain stricter standards than the NES-PF in relation to SNAs. The rules within the Proposed Plan therefore meet the jurisdiction test.

The Proposed Plan also imposes stricter standards than the NES-PF for the clearance of indigenous biodiversity within sensitive areas, such as water bodies, areas 900m above sea level and steep slopes. District authorities do have jurisdiction to impose stricter rules regulating indigenous vegetation clearance within sensitive areas, if the rules give effect to an objective giving effect to the NPS-FM.¹⁶

Under the concept of *ki uta ki tai*, areas such as mountains, river catchment zones and their tributaries come under the protection of the NPS-FM. The indigenous vegetation clearance rules within sensitive areas meet the jurisdiction test, as they give effect to an objective developed to give effect to the NPS-FM.

13.3 Do they meet the justification test?

For rules which regulate indigenous vegetation clearance in both SNAs and sensitive environments, a close examination of the s.32(4) analysis reports showed the analysis failed to meet the standards required by s.32(4) RMA. For example, the Ecosystem & Indigenous Biodiversity Report makes no mention of the stricter requirement it imposes on the clearance of indigenous biodiversity in SNAs for legally established forestry tracks or roads. It seems the writers of the report overlooked the permitted standard established by regs. 93(1), 93(2)(d) 93(5)(c) of the NES-PF. There is no mention in the report of these existing use rights and there is no justification given as to why the Proposed Plan imposes a stricter standard than the NES-PF.

The same lack of analysis was found in the report dealing with vegetation clearance rules in sensitive areas. For example, the s.32(4) report relating to the Natural Character chapter. The rules in this chapter regulate the clearance of vegetation within riparian margins. There was no analysis done to explain why NATC-R3 should contain stricter standards than the setbacks indicated in reg. 29 NES-PF, or why these stricter standards are justified.

Due to the above reasons, the rules relating to indigenous vegetation clearance in SNAs and sensitive areas do not meet the justification test.

13.4 Submission in relation to rules in the PDP

- a) Amend rule ECO-R1 to allow for the appropriate clearance of indigenous vegetation in SNAs for the maintenance of forestry tracks and roads that have been used in the last 50 years (see reg. 93(2)(d) NES-PF).

¹⁶ Regulation 6(1)(a) NES-PF

- b) Amend rule ECO-R1 to allow for indigenous vegetation clearance in an SNA where it is incidental damage and the damage meets the restrictions in reg.93(5)(c) NES-PF.
- c) Amend rule ECO-R1(2) to include the other exceptions provided under reg. 93(2)(b)(c)(d) & (3) of the NES-PF.
- d) Amend rule NATC-R1 to allow for the clearance of vegetation along riparian margins, provided that the clearance is related to plantation forestry activities and the clearance complies with the setbacks indicated in the NES-PF.
- e) Amend rule NATC-R1 PER-4 to allow vegetation clearance for the maintenance, repair or upgrade of forestry tracks and river crossings.

14 Afforestation

14.1 There are two chapter of the Proposed Plan which regulation afforestation, the SASM chapter (discussed above) and the Natural Features and Landscapes chapter. Only the rules contained in the Natural Features and Landscapes chapter will be discussed here.

14.2 Does it meet the jurisdiction test?

The rule NFL-R7(1) VAL overlay makes afforestation a controlled activity in Visual Amenity Landscapes (VAL). The matters of control listed in this rule are stricter than those contained in reg.15(4) NES-PF. Reg.13 of the NES-PF allows the District Council to determine the area which falls within the VAL overlay and to make afforestation a controlled activity in VAL. However, the District Council does not have jurisdiction to impose stricter conditions or standards inside of VAL. Those powers are reserved for the NES-PF. Therefore, the District Council lacks jurisdiction to impose stricter standards than the NES-PF in VAL through rule NFL-R7(1) VAL.

14.3 Does it meet the justification test?

When looking at the s.32(4) analysis report, there was no analysis done to explain why rule NATC-R7(1) VAL overlay should contain stricter standards than the matters of control indicated in reg.15(4) NES-PF, or why these stricter standards are justified. The stricter rules contained in NFL-R7(1) VAL are therefore not justified.

14.4 Submission in relation to rules in the PDP:

- a) Amend rule NFL-R7(1)VAL to the matters of control listed in reg.15(4) of the NES-PF.

15 Earthworks

15.1 Earthworks are regulated in different sections of the Proposed Plan, this submission will only focus upon the earthworks rule NATC-R3.

15.2 Does it meet the jurisdiction test?

Rule NATC-R3 imposes stricter standards than the NES-PF in relation to earthworks carried out in riparian margins. The District Council does have jurisdiction to impose stricter rules which give effect to an objective giving effect to the NPS-FM (see reg6(1)(a) NES-PF).

15.3 Justification?

The Natural Character s.32 report contains no analysis explaining why rule NATC-R3 should contain stricter standards than the setbacks indicated in reg.29 NES-PF, or why these stricter standards are justified.

The NES-PF contains setbacks for earthworks carried out in riparian margins. These standards are deliberately targeted towards plantation forestry activities, to ensure activities do not have a significant adverse effect on the environment.

15.4 Submission in relation to rules in the Proposed Plan:

- a) Amend rule NATC-R3 to permit earthworks associated with plantation forestry activities, provided that the earthworks comply with the conditions set out in the NES-PF.
- b) Amend NATC-R3 to permit earthworks for the maintenance and repair of existing river crossings.

Other Rules which form part of the submission

16 Strategic Direction: SD-03 Climate Change

16.1 Reason for opposition

There should also be recognition of different land uses which help mitigate the effects of climate change, especially activities which sequester carbon.

16.2 Relief sought:

- a) Change the wording of SD-03 to encourage land use practices, such as plantation forestry, which mitigate the effects of climate change.

17 ECO-R4 Long-tailed Bat Protection Area Overlay

17.1 Reason for opposition

Port Blakely have been a key stakeholder in the development and management of the South Canterbury long-tailed bat working group (the protection group). They worked alongside DoC and regional councils to develop pre-harvest monitoring and tree assessment procedures.

The criteria proposed in the Proposed Plan does not align with expert advice and known long-tailed bat behaviours and bat habitat.

When the activity is considered restricted discretionary, the matters of discretion are unduly restrictive. In particular, the need to have an ecologist's report done before a tree can be removed. This rule doesn't align with what was agreed between DoC and the protection group.

17.2 Relief sought:

- a) Amend the matters of discretion to include provision for a person deemed competent by the Department of Conservation to carry out an assessment.
- b) Amend the rule to include the use of Automatic Bat Monitors instead of ecological assessments, as this is the current practice applied by DoC and Port Blakely.

18 GRUZ Policy related to road use & rural activities

18.1 Reason for opposition

The policy should have some flexibility to acknowledge many rural industries use heavy vehicles throughout their daily operations.

These heavy vehicles needs to use the roading network from time to time and without this access to rural roads, many rural industries would cease to operate.

18.2 Relief sought:

- a) Amend the policy to acknowledge the legitimate need of rural industries to use the roading network through the Timaru District, with their heavy vehicles.

General relief

19 Below is the relief sought by Port Blakely in relation to the Proposed Timaru District Plan:

19.1 That the Proposed Plan be rejected in its current form;

19.2 That the Proposed Plan be amended to reflect the issues raised in this submission;

19.3 That the Proposed Plan be amended to incorporate the equivalent regulation of the NES-PF or otherwise amend or delete the rule so that the equivalent NES-PF regulation applies instead of the Proposed Plan rule.

19.4 That the relevant Proposed Plan objectives and policies be amended as required to support and implement the particular relief described above; and/or.

19.5 Such other relief as may be required to give effect to this submission, including alternative, consequential or necessary amendments to the Proposed Plan that address the matters raised by Port Blakely.

APPENDIX B

The drafting suggested in this annexure reflects the key changes Port Blakely Limited (Port Blakely) seeks. Consequential amendment may also be necessary to other parts of the proposed provisions.

Port Blakely proposes the drafting in the below table and seeks that this drafting, or drafting with materially similar effect, be adopted by the Council.

Suggested amendments and alternative drafting is shown in track change:

- Port Blakely's requested insertions are shown using **red**.
- Port Blakely's suggested deletions are shown as red with an underline.

Sub #	Provision	Position	Relief requested	Explanation
Strategic Direction				
1.	SD-03 Climate Change	Support in part	(1) Insert wording to the effect of encouraging land use practices, such as plantation forestry which mitigate the effects of climate change.	(1) There should also be recognition of certain land uses which help mitigate the effects of climate change, especially activities which sequester carbon.
Sites and Areas of Significance to Maori				
2.	SASM-R3 Indigenous vegetation clearance Wahi taoka, wahi tapu, wai taoka, and wai tapu overlays	Object in part	(1) The rule should distinguish between indigenous vegetation that is cleared prior to afforestation and indigenous vegetation which has regrown after afforestation of a site. (2) Permit the clearance of indigenous vegetation associated with plantation forestry activity,	(1) There is also no distinction made between indigenous vegetation clearance that is to take place before afforestation or indigenous vegetation which has regrown since being cleared. Under the NES-PF, indigenous vegetation clearance is permitted if it is associated

		<p>which complies with reg. 93(2) & (3) of the NES-PF.</p> <p>(3) Amend the rule to refer to significant indigenous vegetation, not just indigenous vegetation.</p> <p>(4) The criteria used to assess the significance of indigenous vegetation should have more overlap with the objectives, policies and rules contained in the Ecosystems and Indigenous Biodiversity section of the Plan.</p> <p>(5) Amend the matters of discretion for a restricted discretionary activity to the same as those stated in reg. 94(2) NES-PF.</p> <p><i>Reg. 94(2) NES-PF</i> <i>Discretion is restricted to-</i> <i>(a) the location of the activity;</i> <i>(b) the ecological effects due to-</i> <i>(i) the ecological significance of the indigenous vegetation; or</i> <i>(ii) the location and extent of indigenous vegetation removal; or</i> <i>(iii) the functioning of remaining indigenous vegetation, including edge effects and retention of corridors;</i> <i>(c) the mitigation measures proposed;</i> <i>(d) alternatives to clearance and disturbance of indigenous vegetation;</i></p>	<p>with a plantation forestry activity and complies with regulations 93(2) & (3).</p> <p>(2) District Council rules can be more stringent than NES-PF rules regulating indigenous vegetation clearance (IVC), but only in relation to ONLs, SNA's and objectives developed to give effect to the National Policy Statement for Freshwater Management (NSP-FM).</p> <p>The areas identified as SASM could come inside the jurisdiction of reg 6, if their protection is necessary for the <i>Mana o te Wai</i>, a central concept underpinning the NPS-FM. These include areas which protect mahinga kai and cultural traditions connected to water ways. In addition, under the concept of <i>ki uta ki tai</i>, mountains, river catchment zones and their tributaries also come under the protection of the NPS-FM.</p> <p>(3) There is doubt about whether the rules are justified. In the s32(4) analysis report issued by the Timaru District Council, it states that the effects of forestry on cultural heritage are not addressed by the terms and conditions in the NES-PF. Therefore, section 42A(b) of the RMA applies. This section allows terms and conditions in plans to be different from</p>
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			<p><i>(e) the information and monitoring requirements.</i></p>	<p>terms and conditions in standards, only in relation to effects of activities which are not dealt with in the standard (NES-PF).</p> <p>But in the s.32(4) report (Timaru District Plan Review: Report on Sites and Areas of Significance to Maori), the effects on cultural heritage related to forestry activity are reduction in flow through afforestation (p.53) and afforestation (p.55). Both of these effects are addressed by the NES-PF. Therefore, s.43A(c) should apply and the terms and conditions in the NES-PF should prevail.</p> <p>(4) SASM-R3 relates to all types of indigenous vegetation, whether it is classified as significant or non-significant.</p> <p>This places a very onerous burden upon applicants to comply with indigenous vegetation clearance rules in situations where the vegetation itself is likely a mix of indigenous and introduced species and has low value ecological value.</p> <p>(5) Under the NES-PF, indigenous vegetation clearance is permitted if it complies with subclause (2) or (3) of regulation 93. s.43A(c) of the RMA states that if the rules in the plan deal with the same effects as the rules in an environmental standard,</p>
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				<p>then the rules in the environmental standard prevail. Which in this case is the NES-PF.</p> <p>The NES-PF already addresses the effects of IVC from plantation forestry. The rules in the SASM R3 duplicates the regulation of the effects of this activity, therefore the rules in the NES-PF should prevail.</p> <p>When IVC because a restricted discretionary activity under the NES-PF, the matters of discretion are set out in reg.94(2).</p>
3.	SASM-R8	Oppose in part	<p>(1) SASM-R8 should only apply to forestry earthworks and forest quarrying activities, not to afforestation or replanting and should impose a buffer around these sites of 10 or 20 m, not designating the whole title as non-complying.</p>	<p>(1) SASM-R8 imposes a stricter standard than the NES-PF, as it makes plantation forestry a non-complying activity in areas with a wahi tapu overlay. The NES-PF contains no restrictions on plantation forestry activity in wahi tapu areas.</p> <p>SASM-R8 lacks jurisdiction to impose a stricter standard than the NES-PF, because reg.6(1)&(2) NES-PF do not allow more stringent measures in relation to cultural heritage.</p> <p>SASM-R8 relates to wahi tapu. Wahi tapu are land-based sites which are sacred to tangata whenua. These areas are not</p>

				SNA, ONL, nor are they connected to the objectives under the NPS-FM.
Ecosystems and Indigenous Biodiversity				
4.	ECO-P2 Appropriate indigenous vegetation clearance in significant natural areas	Oppose in part	<p>(1) Allow for the appropriate clearance of indigenous vegetation in SNAs for the maintenance of forestry tracks and roads that have been used in the last 50 years (see reg 93(2)(d) NES-PF</p> <p>(2) Allow for vegetation clearance in a SNA where it is incidental damage and the damage meets the restrictions in reg.93(5)(c) NES-PF.</p> <p>(3) Insert text into this policy to clarify that the NES-PF regulations will prevail over the proposed district plan regarding indigenous vegetation clearance in significant natural areas.</p>	<p>(1) ECO-P2 imposes a stricter standard than the NES-PF in relation to the clearance of indigenous vegetation for the purposes of maintaining forestry tracks and roads located in SNAs and where damage to indigenous vegetation is incidental to plantation forestry operations.</p> <p>Reg.6(2)(b) does allow for district plans to contain stricter standards than the NES-PF in relation to SNAs. This policy therefore meets the jurisdiction test.</p> <p>However, the ECO-P2 fails to pass the jurisdiction test, which requires, under s32(4) RMA, an examination as to whether the restriction is justified in the circumstances of the district.</p> <p>The Timaru District Council s.32 Ecosystem & Indigenous Biodiversity Report makes no mention of the stricter requirement it imposes on the clearance of indigenous biodiversity in SNAs for legally established forestry tracks or roads. It seems the writers of the report have overlooked the permitted standard established by regulations 93(1), 93(2)(d)</p>

				<p>93(5)(c) of the NES-PF. There is no mention in the report of these existing use rights and there is no justification given as to why the proposed policies and rules now impose a stricter standard than the NES-PF.</p> <p>It is considered that the NES-PF provisions regarding this matter should prevail over the proposed district plan rules, and the proposed amendment would achieve this outcome.</p>
5.	ECO-P5 Protection of Significant Natural Areas	Oppose in part	<p>(1) allow for the appropriate clearance of indigenous vegetation in SNAs for the maintenance of forestry tracks and roads that have been used in the last 50 years (see reg 93(2)(d) NES-PF and</p> <p>(2) Allow for vegetation clearance in an SNA where it is incidental damage and the damage meets the restrictions in regulation 93(5)(c) NES-PF.</p> <p>(3) Insert text into this policy to clarify that the NES-PF regulations will prevail over the proposed district plan regarding indigenous vegetation clearance in significant natural areas.</p>	<p>(1) See comments made in relation to ECO-P2</p>
6.	ECO-R1 Clearance of indigenous vegetation	Oppose in part	<p>(1) Insert the text as follows:</p>	<p>(1) See comments made in relation to ECO-P2</p>

	<p>(1) Significant Natural Areas Overlay</p>		<p>PER-6 This rule does not apply to plantation forestry activities and instead indigenous vegetation clearance within a SNA associated with plantation forestry activity is regulated under the NES-PF pursuant to Regulations 93(2)(d), (4) and (5)(c), and Regulation 94</p>	
<p>7.</p>	<p>ECO-R1 Clearance of Indigenous vegetation (2) Within 50m of any wetland</p> <p>In the Coastal Environment, within 20m of mean high water springs</p> <p>Within 20m of the bank of any waterbody</p> <p>Within 20m of any waipuna (spring)</p> <p>At an altitude of 900m or higher</p> <p>Land with an average slope of 30° or greater</p>	<p>Oppose in part</p>	<p>(1) Delete the text as follows:</p> <p>PER-4 The clearance is of indigenous vegetation that:</p> <ul style="list-style-type: none"> a. has been planted and managed specifically for the purpose of harvesting, or <u>b. has grown up under an area of lawfully established plantation forestry, or</u> c. has been planted and/or managed as part of a domestic or public garden or has been planted for amenity purposes as a shelterbelt, or d. is within an area of improved pasture; or <p>(2) Insert the text as follows:</p> <p>PER-6 This rule does not apply to plantation forestry activities and instead indigenous vegetation clearance associated with plantation forestry</p>	<p>(1) ECO-R1 imposes stricter standards than the NES-PF in relation to the clearance of indigenous in areas considered sensitive, such as water bodies, areas above 900m asl and steep slopes.</p> <p>The district authorities do have jurisdiction to impose stricter rules which give effect to an objective giving effect to the NPS-FM (see reg6(1)(a) NES-PF).</p> <p>However, when looking at the s.32(4) analysis report, there was no analysis done to explain why ECO-R1 should contain stricter standards than the indigenous vegetation clearance standards in the NES-PF.</p> <p>ECO-R1 does permit the clearance of indigenous vegetation which has grown in a lawfully established plantation forestry. This is in line with reg 93(2)(a) of the NES-PF. However, the other permitted activities contained in</p>

			<p>activity is regulated under the NES-PF pursuant to Regulation 94 and Regulation 94.</p>	<p>regulations 93(2)&(3) are not mentioned in the report and may have been overlooked by the writers of the report.</p> <p>It is considered that the NES-PF provisions regarding this matter should prevail over the proposed district plan rules, and the proposed amendment would achieve this outcome.</p>
8.	<p>ECO-R4 Long-tailed Bat Protection Area Overlay</p> <p>Clearance of trees in the Long-Tailed Bat Protection Area</p>	Oppose in part	<p>(1) Amend the matters of discretion when compliance is not achieved, to include the possibility to use an Automatic Bat Monitor instead of an ecological assessment.</p> <p>(2) Amend the matters of discretion to include the possibility of a person deemed competent by the Department of Conservation to carry out an assessment.</p>	<p>(1) Port Blakely have been a key stakeholder in the development and management of the South Canterbury long-tailed bat working group. They worked alongside DOC and regional councils to develop pre-harvest monitoring and tree assessment procedures.</p> <p>The criteria proposed in the Proposed Plan does not align with expert advice and known long-tailed bat behaviours and bat habitat.</p> <p>For example- tree circumference has very little to do with potential LTB habitat. Also the requirement for a <i>'Specialist assessment by a suitably qualified ecologist which may only be carried out during October to April when bats are not hibernating'</i> is extremely restrictive and we believe will have an adverse effect on public engagement.</p>

				<p>When the activity is considered restricted discretionary, the matters of discretion are unduly restrictive, especially the need to have an ecologists report done before a tree can be removed.</p> <p>This rule doesn't align with what was agreed between DoC and the protection group.</p>
Natural Character				
9.	<p>NATC-R1 Riparian margins of a river that is not an High Naturalness Water Body</p> <p>Vegetation Clearance</p>	Object in part	<p>(1) Allow for the clearance of vegetation along riparian margins, provided that the clearance is related to plantation forestry activities and the clearance complies with the setbacks indicated in the NES-PF.</p> <p>(2) In PER-4, amend the rule to allow vegetation clearance for the maintenance, repair or upgrade of forestry tracks and river crossings.</p>	<p>(1) NATC-R1 imposes stricter standards than the NES-PF in relation to the clearance of vegetation in riparian margins.</p> <p>The district authorities do have jurisdiction to impose stricter rules which give effect to an objective giving effect to the NPS-FM (see reg6(1)(a) NES-PF).</p> <p>However, when looking at the s.32(4) analysis report, there was no analysis done to explain why NATC-R1 should contain stricter standards than the setbacks indicated in regulation 14 NES-PF, or why these stricter standards are justified.</p> <p>The setbacks contained in the NES-PF are specific to plantation forestry standards and are deliberately comprehensive and</p>

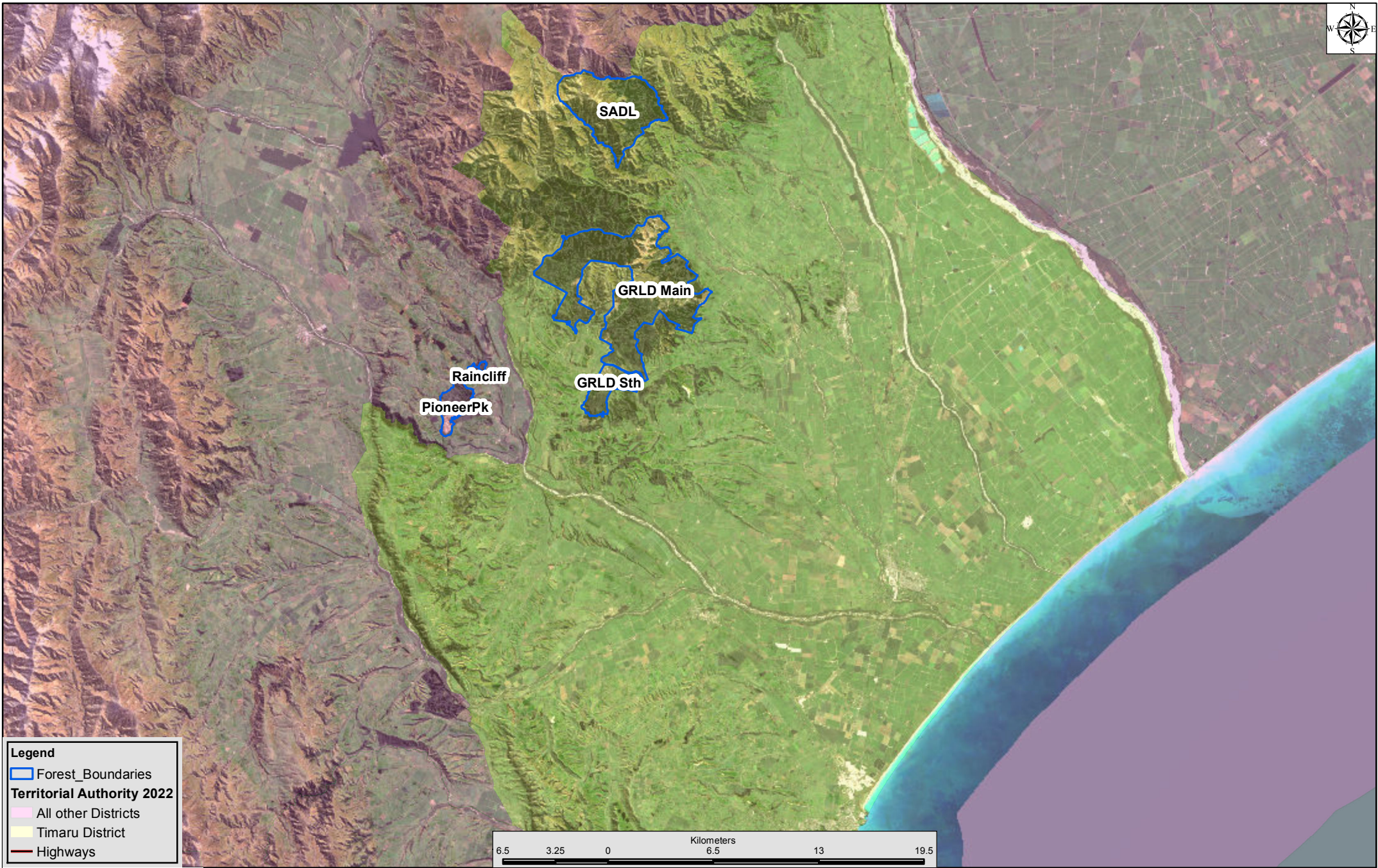
				<p>robust to ensure they do not permit an activity with significant adverse effects. They are also designed to prevent unwarranted variation across regions and districts in the management of plantation forestry.</p> <p>The setbacks from waterbodies related to afforestation are as follows:</p> <p><i>NES-PF Reg. 14</i> <i>(3) Afforestation must not occur—</i> <i>(a) within 5 m of—</i> <i>(i) a perennial river with a bankfull channel width of less than 3 m; or</i> <i>(ii) a wetland larger than 0.25 ha; or</i> <i>(b) within 10 m of—</i> <i>(i) a perennial river with a bankfull channel width of 3 m or more; or</i> <i>(ii) a lake larger than 0.25 ha; or</i> <i>(iii) an outstanding freshwater body; or</i> <i>(iv) a water body subject to a water conservation order; or</i> <i>(v) a significant natural area; or</i> <i>(c) within 30 m of the coastal marine area.</i></p>
10.	<p>NATC-R3 Riparian margins of a river that is not an HNWB</p> <p>Earthworks</p>	Object in part	<p>(1) Amend NATC-R3 to permit earthworks associated with plantation forestry activities, provided that the earthworks comply with the conditions set out in the NES-PF</p> <p>(2)</p>	<p>(1) NATC-R3 imposes stricter standards than the NES-PF in relation to earthworks carried out in riparian margins.</p> <p>The District Council does have jurisdiction to impose stricter rules which give effect</p>

			<p>Amend NATC-R3 to permit earthworks for the maintenance and repair of existing river crossings.</p>	<p>to an objective giving effect to the NPS-FM (see reg6(1)(a) NES-PF).</p> <p>However, when looking at the s.32(4) analysis report, there was no analysis done to explain why NATC-R3 should contain stricter standards than the setbacks indicated in reg. 29 NES-PF, or why these stricter standards are justified.</p> <p>The NES-PF contains setbacks for earthworks carried out in riparian margins.</p> <p>These standards are deliberately targeted towards plantation forestry activities to ensure activities do not have a significantly adverse effect on the environment.</p> <p><i>NES-PF Reg. 29</i> <i>(1) Earthworks must not occur within 10 m of—</i> <i>(a) a perennial river; or</i> <i>(b) wetlands larger than 0.25 ha; or</i> <i>(c) lakes larger than 0.25 ha; or</i> <i>(d) an outstanding freshwater body; or</i> <i>(e) a water body subject to a water conservation order.</i></p> <p><i>(2) Earthworks must not occur within 30 m of the coastal marine area.</i></p>
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				<p><i>(3) The setbacks in subclause (1) do not apply—</i></p> <p><i>(a) if the earthworks are for the construction and maintenance of a river crossing, a sediment or water control measure, or a slash trap or debris retention structure; or</i></p> <p><i>(b) if the earthworks within the setback will result in less than 100 m² of soil disturbance in any 3-month period, and are not within 5 m of the water body; or</i></p> <p><i>(c) during the maintenance and upgrade of existing earthworks.</i></p>
Natural Features and Landscapes				
11.	<p>NFL-R7 (1) VAL overlay</p> <p>Afforestation</p>	Object in part	<p>(1) Amend the matters of control to those listed in reg.15(4) of the NES-PF</p> <p><i>Reg.15(4) NES-PF</i> <i>For the purpose of subclause (3), control is reserved over the effects on the visual amenity values of the visual amenity landscape, including any future effects from plantation forestry activities.</i></p>	<p>(1) Reg.13 of the NES-PF allows the District Council to restrict afforestation in Visual Amenity Landscapes. The NFL-R7(1) VAL overlay makes afforestation a controlled activity in VAL.</p> <p>According to reg.15 (4), where the District Council has made afforestation in VAL a controlled activity, control is reserved over the effects on the visual amenity values of the VAL, including any future effects from plantation forestry activities.</p> <p>Under the NFL-R7(1) VAL overlay, the matters of control are stricter than those allowed by reg.15(4). The District Council has jurisdiction to impose stricter</p>

				standards than the NES-PF in VAL. However, when looking at the s.32(4) analysis report, there was no analysis done to explain why NATC-R7(1) AL overlay should contain stricter standards than matters of control indicated in reg.15(4) NES-PF, or why these stricter standards are justified.
Area Specific Matters				
General Rural Zone				
12.	<p>GRUZ-P7 Industrial activities, rural industries and other activities</p> <p>1. Only allow rural industries in GRZ where: (e) the scale, location and intensity of the activity will not compromise the efficiency and safety of the roading network.</p>	Object in part.	(1) Amend the policy to acknowledge the legitimate need of rural industries to use the roading network through the Timaru District, with their heavy vehicles.	(1) The policy should have some flexibility to acknowledge that many rural industries use heavy vehicles throughout their daily operations. These heavy vehicles need to use the roading network from time to time and without this access to rural roads, many rural industries would cease to operate.

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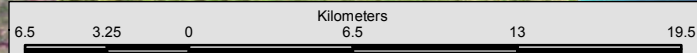


Legend

- ▭ Forest_Boundaries

Territorial Authority 2022

- ▭ All other Districts
- ▭ Timaru District
- ▭ Highways



Port Blakely Ltd Forests in the Timaru District
Total land area managed by PBL in Timaru District = 7179 ha



Created by user:
jburgess

Date: 9/12/2022
Time: 12:00:51 p.m.

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APPENDIX D

NES-PF regulations relevant to assessment of the Proposed Timaru District Plan

Afforestation

1. Regulation 12 provides that afforestation must not occur within a SNA or ONL. Afforestation is a restricted discretionary activity if regulation 12 is not complied with (refer regulation 16(1)) with the Council's discretion limited to:¹
 - (a) the level of wilding tree risk:
 - (b) the mitigation proposed to restrict wilding conifer spread, including the species to be planted:
 - (c) the effects on the values of the significant natural area or outstanding natural feature or landscape:
 - (d) the information and monitoring requirements.
2. Further, regulation 13 provides that afforestation must not occur within a visual amenity landscape if the rules in the relevant plan restrict plantation forestry activities within that landscape. Afforestation is a controlled activity if regulation 13 is not complied with (regulation 15(3)), with control reserved over the effects on the visual amenity values of the visual amenity landscape, including any future effects from plantation forestry activities.²

Earthworks

3. The NES-PF provides that a forestry earthworks management plan is required for all earthworks that involve more than 500 m² of soil disturbance in any 3-month period.³
4. Regulation 27(2) states that a forestry management plan must (among other matters) identify the environmental risks associated with the earthworks and provide measures to avoid, remedy, or mitigate the adverse effects of the activity on the environment.
5. Such a plan must include a map that shows (among other matters) the location of any features that are to be protected during the operation, including significant natural areas.⁴
6. Regulation 30(2)(c) provides that spoil must not be deposited into (among other matters) a significant natural area.

Quarrying

7. The NES-PF requires that excavated overburden from quarrying activities must not be deposited into a significant natural area.⁵

Harvesting

¹ Reg 17(1)

² Reg 15(4) NES-PF

³ Regulation 27(1) NES-PF

⁴ Schedule 3, clause 3(3) NES-PF

⁵ Reg 55(1)(c) NES-PF

8. A harvest plan is required for all erosion susceptibility classification zones. The harvest plan must identify the environmental risks associated with the earthworks and provide operational responses to those risks that avoid, remedy, or mitigate the adverse effects of the activity on the environment.⁶
9. Similar requirements apply to a harvest plan as for an earthworks management plan with respect to the need to include a map showing among other matters any significant natural areas and management practices to address risk to such features.⁷ In addition, a harvest plan must include any operational restrictions to minimise damage to indigenous vegetation.

Replanting and wildings

10. The NES-PF provides that replanting must not occur in any area closer than the stump line to an adjacent significant natural area.⁸
11. Regulation 79(1) requires that a wilding tree risk calculation be undertaken prior to any replanting and regulation 79(6) provides that wilding conifers established in wetlands and significant natural areas must be eradicated—
 - (a) before replanting begins, if the wilding conifer has resulted from the previous harvest:
 - (b) at least every 5 years after replanting, if the wilding conifer has resulted from the replanting.

Indigenous vegetation clearance

12. Indigenous vegetation clearance is permitted in the circumstances detailed in regulation 93 NES-PF. It permits indigenous vegetation clearance within an area of plantation forest where such vegetation:
 - (a) is regrowth (regulation 93(2)),
 - (b) is of a limited scale (regulation 93(3));
 - (c) or is incidental damage (regulation 93(4)).
13. Further, a limited amount of indigenous vegetation clearance may occur in a significant natural area where-
 - (a) the vegetation is overgrowing a forestry track used in the past 50 years (regulation 93(1) and 93(2)(d), or
 - (b) the vegetation clearance is incidental damage (as defined) and is damage that meets the restrictions at regulation 93(5)(c) NES-PF.
14. For ease of reference regulation 93 NES-PF is set out in full below.

⁶ Reg 66(2)(a) NES-PF

⁷ Schedule 3 clause 5(c) NES-PF

⁸ Reg 78(1) and 78(3)(e) NES-PF

Indigenous vegetation clearance – Regulation 93 NES-PF

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).