

Technical Advice Note National Environmental Standards for Freshwater 2020 - Temporary Intensification Provisions and Otago Regional Council's Regional Plan

Disclaimer: *This memo does not constitute legal advice and should not be relied on as such.*

Executive Summary

The Government's Essential Freshwater package aims to "stop further degradation of freshwater" and "improve water quality within five years". Farmers are therefore required to obtain resource consents for:

- Conversion of more than 10 ha of land from plantation forestry to pastoral land use
- Conversion of more than 10 ha of land on farm to dairy farmland
- Increasing the area of irrigated dairy farmland by more than 10 ha
 - Compared with 2 September 2020.

In addition, resource consents are required for:

- Conversion of land on a farm to dairy support land; and
- Expansion of an area of land used for intensive winter grazing
 - Where this will increase the area of land used for these activities beyond the maximum of that which was occurring between 1 July 2014 and 30 June 2019.

These requirements apply in addition to any requirements applying to farming under Otago Regional Council's plans or any other requirements in the National Environmental Standards for Freshwater 2020 (NES-F).

This advice note provides clarification on the NES F temporary intensification rules and addresses the relationship with Proposed Plan Change 8 (Discharge management) to the Regional Plan: Water for Otago (6 July 2020).

Introduction

The Government's Essential Freshwater (Action for Healthy Waterways) package came into effect on 3 September 2020. The purpose of the package is to "stop further degradation of freshwater" and "improve water quality within five years".¹ The package includes a new National Policy Statement for Freshwater Management 2020 (NPSFM), new National Environmental Standards for Freshwater 2020² (NES-F) and Stock Exclusion Regulations 2020. This technical advice note covers the temporary intensification provisions in subparts 2 and 3 of Part 2 of the NES-F and the way it interacts with Otago Regional Council's planning framework.

¹ MfE factsheet - Essential Freshwater Overview

² Resource Management (National Environmental Standards for Freshwater) Regulations 2020

NES-F Temporary Intensification Provisions

The NES-F contains “interim regulations” to restrict agricultural intensification. These regulations remain in force until the regional council gives public notice that it has implemented the NPSFM, and they will be automatically revoked on 1 January 2025. Full implementation of the NPSFM will occur as part of the future Land and Water Plan and must be done by 31 December 2024.

Until then, the NES-F regulates:

- Conversion of land used for plantation forestry to pastoral land use;³
- Conversion of land on farm to dairy farmland;⁴
- Irrigation of dairy farmland;⁵
- Conversion of land to dairy support land⁶ ; and
- Expansion of area of land used for intensive winter grazing.⁷

In each case, the NES-F regulates both the use of land (or use of water in the case of the irrigation of dairy farmland) and discharge of contaminants, either by permitting both activities, or by requiring resource consent for both activities. Whether resource consents are required for conversion or expansion of one of the listed activities is determined by reference to the date or period specified in Table 1.

Table 1: Summary of Temporary Intensification Provisions in the NES-F

Intensification Activity	Consents required where there is an:	Consents Required under NES-F
Conversion of land used for plantation forestry to pastoral land use	Increase in the area on farm used for pastoral land of more than 10 ha from 2 September 2020	Section 9 land use consent and s15 discharge permit ⁸
Conversion of land on farm to dairy farmland	Increase in the area on farm used for dairy farmland of more than 10 ha from 2 September 2020	Section 9 land use consent and s15 discharge permit ⁹
Irrigation of dairy farmland	Increase in the area of dairy farmland irrigated in the 12-month period preceding 2	Section 14 water permit and s15 discharge permit ¹⁰

³ NES-F Subpart 2 – Agricultural intensification: temporary standards regulation[®] 16-17. See Appendix 1 for definition of terms

⁴ NES-F Subpart 2 – Agricultural intensification: temporary standards r18-19. See Appendix 1 for definition of terms

⁵ NES-F Subpart 2 – Agricultural intensification: temporary standards r20-21. See Appendix 1 for definition of terms

⁶ NES-F Subpart 2 – Agricultural intensification: temporary standards r22-23. See Appendix 1 for definition of terms

⁷ NES-F Subpart 3 – Intensive Winter Grazing r29-30. Note that even if not increasing in area, a consent for intensive winter grazing may be required if the conditions of r26 cannot be met after 1 May 2021

⁸ Land use consent required under r17(1) NES-F. Discharge permit required under r17(2) NES-F

⁹ Land use consent required under r19(1) NES-F. Discharge permit required under r19(2) NES-F

¹⁰ Water permit required under r21(1) NES-F. Discharge permit required under r21(2) NES-F

	September 2020 of more than 10 ha	
Use of land as dairy support land	NES Increase in the area on farm used for dairy support land in the reference period of 1 July 2014 and close of 30 June 2019 ¹¹	Section 9 land use consent and s15 discharge permit ¹²
Expansion of area of land used for intensive winter grazing (IWG)	Increase in the area on farm used for IWG beyond the maximum area used for IWG in the reference period of 1 July 2014 and close of 30 June 2019 ¹³	Section 9 land use consent and s15 discharge permit ¹⁴

Otago Regional Council planning frameworks

Otago Regional Council has progressively implemented controls on farming activities via the Regional Plan Water for Otago and Proposed Plan Change 8 (Discharge management) to the Regional Plan: Water for Otago (6 July 2020).

Presently Rule 12.C.1.3 of the Regional Plan: Water from 1 April 2026 will permit the discharge of nitrogen onto or into land in circumstances which may result in nitrogen entering groundwater. However, Council has also formally approved a full review of the Regional Plan: Water, with a new Land and Water Regional Plan to be notified by December 2023. It is highly likely that the provisions of the Land and Water Regional Plan will replace Rule 12.C.1.3 of the Regional Plan: Water.

The Otago Regional Council has also prepared Proposed Plan Change 8 (Discharge management) to the Regional Plan: Water for Otago. Proposed Plan Change 8 amends existing, and introduces new provisions including:

- Effluent storage and application to land through new minimum standards.
- Promoting good farming practices, including better managing contaminant loss from intensive grazing and stock access to water bodies.

However, these rules do not include intensification of land use. Therefore, unless your proposal includes increasing the area of intensive grazing then you do not need to consider the provisions of this plan change for the intensification activity. You must ensure that all other related activities such as culvert installation, earthworks etc. do not require a consent under Council's Regional Plans.

¹¹ This reference period is defined in Part 1, r3 of the NES-F

¹² Land use consent required under r23(1) NES-F. Discharge permit required under r23(2) NES-F

¹³ This reference period is defined in Part 1, r3 of the NES-F

¹⁴ Land use consent required under r30(1) NES-F. Discharge permit required under r30(2) NES-F

Who needs to apply and what needs to be included in an application for consent under the NES-F?

If a farmer wishes to undertake a change in land use of the types described in Table 1, then they are responsible for applying for the required resource consents. This includes situations where some aspects of their farming activity are authorised under a water permit held by an irrigation scheme.

In addition to the normal requirements that must be met for a resource consent application (Schedule 4 of the RMA), the NES-F places additional conditions on the grant of any resource consent under these temporary intensification provisions. Of most relevance is that the NES-F states¹⁵ that consent can only be granted for an activity specified in Table 1 if the Otago Regional Council is satisfied that it will not result in an increase of either:

- The load of a contaminant¹⁶ in the catchment; or
- The concentration of a contaminant in the receiving environment –
 - Compared with what was occurring at the close of 2 September 2020. Any consent granted under these temporary provisions can only be for a term ending before 1 January 2031.

Applications will therefore need to demonstrate how the proposed change in land use (intensification) will avoid an increase in contaminant loads in the catchment, or concentrations in the (local) receiving environment. Because this is likely to require a case-by-case comprehensive technical assessment, we recommend contacting our Consents Team 0800 474 082 public.enquiries@orc.govt.nz to arrange a pre-application meeting in order to discuss these requirements and the best way to approach the assessments.

Conclusion

This advisory note provides Otago Regional Council's view of the temporary intensification provisions in the NES-F. Consent applicants are likely to have specific questions on how these provisions will apply to particular proposals. We encourage you to make use of our offer of 30 minutes of free preapplication advice. This can be arranged by calling Consents Team on 0800 474 0827 or emailing public.enquiries@orc.govt.nz. This guidance does not constitute legal advice and should not be relied on as such.

Appendix 1: Definitions

The NES-F defines several terms used in the temporary intensification provisions:

Dairy cattle –

(a) means cattle farmed for producing milk; and

(b) includes—

- (i) any bull on the farm whose purpose is mating with those cattle; and
- (ii) unweaned calves of those cattle; but

¹⁵ See r24 of the NES-F for conversion of land from plantation forestry to pastoral land use, conversion of land on farm to dairy farmland, conversion of land to dairy support land, and expansion in the area of irrigated dairy farmland See r30(3) of the NES-F for expansion of the area of land used for intensive winter grazing

¹⁶ Note that the NES-F manages “contaminants” in general, not just nitrogen. Other contaminants that may be of concern include phosphorous, pathogens (e.g. E. coli), and sediment (where the activity will occur near a waterbody)

(c) does not include dairy support cattle.

Dairy farmland means land on a farm that is used for grazing dairy cattle.

Dairy support cattle means cattle that –

- (a) are farmed for producing milk, but are not being milked (for example, because they are heifers or have been dried off); and
- (b) are grazed on land that is not grazed by dairy cattle.

Dairy support land means land on a farm that is used for grazing dairy support cattle.

Pastoral land use is defined in the NES-F by reference to s217B of the Resource Management Act 1991:

Pastoral land use means the use of land for the grazing of livestock