



A PROPOSED NATIONAL ENVIRONMENTAL STANDARD FOR THE OUTDOOR STORAGE OF TYRES

Report on submissions and recommendations



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Executive summary

The proposal for a National Environmental Standard (NES) for outdoor storage of tyres responds to the environmental and health risks associated with inappropriate outdoor storage of tyres and a gap in the regulatory framework. Most councils report that, generally, district and regional plan rules and bylaws addressing tyres do not exist.

A proposal for an NES for tyres was developed in 2017 and publicly consulted on. The proposal was supported by most submitters. The consultation process led to the proposal being revised. A further consultation on the revised proposal took place between February and April 2020. The 2020 consultation document¹ proposed a more nuanced NES.

Feedback from submitters

While there were some mixed views in submissions, most submitters continued to support the general intent of the NES to provide a clear, nationally consistent regulatory framework to manage the adverse effects of outdoor tyre storage. Submitters were also broadly supportive of the changes in the proposed NES (compared to the 2017 NES) as follows:

- **regional council responsibility** – 73 per cent of submitters supported this change, primarily on the basis the NES is better aligned with regional council RMA functions
- **discretionary consent threshold** – 58 per cent of submitters supported a smaller threshold of 100m³ whereas 16 per cent of submitters supported a larger threshold of 200m³ or 360m³ (a further 26 per cent of submitters were neutral)
- **permitted activity rule** – 83 per cent of submitters supported the introduction of the permitted activity rule, although there were a number of issues raised with the clarity and robustness of the permitted activity conditions.

Conclusions

We recommend that regional councils should be responsible for managing the outdoor storage of tyres. Most submissions confirmed the benefits of this.

We also now recommend that the NES allows regional councils to make more stringent plan rules (or bylaws), as was suggested by some council submitters.

On the issue of the resource consent threshold, we recommend the threshold be set at 100 m³ (with certain exemptions). The 100 m³ threshold, comprising 1250 tyres, does not have the level of risks as does 200 m³, comprising 2500 tyres.

We recommend exempting new and retread tyres and tyre casings from the resource consent requirement if these are on a site where the primary business is the supply and servicing of new or retread tyres. This keeps the main focus of the NES on end-of-life tyres while reducing compliance costs.

In relation to farm silage tyres, we recommend the exemption for farm silage tyres from the discretionary rule be retained in the NES proposal. Further, they should be exempted only when they are either on the silage stack or stored in the off-season adjacent to the silage stack.

In relation to the proposed permitted activity rule, we recommend, in line with the views of submitters, the proposed NES include a permitted activity rule. Many submitters argued the

¹ Consultation document: <https://www.mfe.govt.nz/consultations/outdoor-storage-tyres>

proposed permitted activity threshold of 40m³ was too high. Consequently, we recommend the permitted activity threshold be reduced to 20m³, or approximately 250 EPU's (car tyres). This threshold acts as a trigger for any tyre storage to comply with the permitted activity conditions.

Submitters made a number of suggestions to improve the workability of the permitted activity conditions. Consequently, we recommend some refinements to the conditions. The revised proposed conditions are listed below:

- a) The height of the tyre pile must be no more than 3 m (except where the vertical height of the tyre is higher than 3 m).
- b) Tyres must not be located within 50 m from the centreline of transmission lines and other National Grid infrastructure.
- c) Tyres must not be located within:
 - 20 m of any surface waterbody or wetland
 - 50 m of any bore or waterbody used for domestic or community drinking water supply
- d) Tyres must be in an area where the base of the tyres is at least 1 m above the highest level of the groundwater table.
- e) Tyres must not be located within 50 m of the coastal marine area.
- f) Tyres must not be located within 100 m from the boundary of any port.

Tyre storage outdoors that does not comply with any of the conditions above would require a resource consent from the consent authority as a discretionary activity.

Overall, we believe this NES proposal balances environmental benefits while keeping compliance costs reasonable, subject to a report on the final regulations (under section 32 of the RMA).

We will produce implementation guidance when the finalised NES is gazetted.

Introduction

This report provides recommendations to the Minister for the Environment on the proposed National Environmental Standard for outdoor storage of tyres (NES) in accordance with section 46A(4)(C) of the Resource Management Act 1991 (RMA). This report is in two parts:

Part A provides:

- context and background to the proposal
- an overview of the submissions process.

Part B provides a summary of key themes in submissions, analysis of those key themes and issues raised, and recommendations. This analysis is structured under the following headings:

- responsibility for the proposed NES
- threshold for resource consent
- permitted activity rule and conditions
- indoor tyre storage
- exemptions from the NES
- other issues.

Part A

Section 1: Context for proposed NES

The proposed NES for the outdoor storage of tyres seeks to address the environmental and health risks associated with the outdoor storage of tyres and support more consistent management practices across New Zealand.

The numbers of tyres entering New Zealand and reaching their end-of-life are continuing to increase. There is a limited market for used tyres, which makes it challenging to provide for responsible disposal of end-of-life tyres. This can create incentives to stockpile or dispose of end-of-life tyres in the cheapest way possible. Where such tyres are stored and disposed of outdoors, they pose risks to the environment, human health and local communities, particularly when they are stored in large volumes and/or near to or within sensitive areas. The key risks are fire, discharge through leaching, visual and amenity impacts, pests, and financial liability.

There is currently no legislation nor national regulations relating specifically to the outdoor storage of tyres. Councils have the ability to address outdoor tyre storage through the RMA and by-laws under the Local Government Act 2002. However, these tools are underutilised and most councils report that, generally, district and regional plan rules and bylaws addressing tyres do not exist. Government intervention is required to introduce nationally consistent rules to address the risks associated with outdoor tyre storage.

Section 2: Process for developing the proposed NES

A proposal for an NES for tyres was developed in 2017 and was publicly consulted on. There were 35 submissions. A clear majority of those who submitted to the consultation supported the proposal. Submitters also raised issues about the proposal.

The consultation process, analysis of submissions, further policy work and research into outdoor tyre storage under the RMA², led to the proposal being refined. In particular, the proposed NES includes a new permitted activity rule and regional councils will be responsible for the implementation of the NES instead of territorial authorities.

Consultation on the proposed NES took place in early 2020.

Section 3: Overview of submissions

What was consulted on

The proposed [NES consultation document](#) reiterated the original objectives of the NES, which had not changed from the 2017 proposal. The consultation document proposed a more nuanced NES,

² 4Sight Consulting (2019). *Outdoor tyre storage and the Resource Management Act 1991*. Prepared for the Ministry for the Environment.

with the addition of a permitted activity rule with conditions. It also proposed regional council responsibility (instead of territorial authorities), and sought feedback on a reduced volume threshold for resource consent (100m³ instead of the previously proposed 200m³).

Overview of submissions

Public consultation on the proposed NES occurred from 25 February to 8 April 2020 and 50 submissions were received. Appendix 2 lists the submitters.

The proposed NES consultation document asked nine questions as set out in table 2 below. They relate to support or otherwise for aspects of the proposed NES. Table 2 breaks down the submissions received by their responses to the consultation questions.³

Table 2: Question responses from submitters

Question	Total	Agree	Disagree	Neutral
1. Do you agree with responsibility for the NES sitting with regional councils rather than district councils? Why?	44	73%	11%	16%
2. Do you support having a resource consent threshold for the outdoor storage of tyres below the previously proposed 200m ³ ? Why?	42	52%	26%	21%
3. Do you support the addition of a proposed permitted activity rule with requirements? Why/why not?	42	83%	7%	10%
4. Do you have any suggestions on the indicative requirements in table 1?	Comment only			
5. Which of the options (200m ³ or 100m ³) for setting a resource consent threshold do you support? Why?	100m ³ 58%	200m ³ 13%	360m ³ 3%	Neutral 26%
6. How would the proposed options affect your business/organisation?	Comment only			
7. Do you think the scope of the proposed NES should be extended to include indoor tyre storage? Why/why not?	46	50%	21%	28%
8. Do you agree with the proposed exemption from the resource consent requirement for farm silage tyres? Why/why not?	46	48%	26%	28%
Do you have comments on the other aspects of the proposed NES?	Comment only			

A detailed overview of submissions is provided in Part B of this report.

³ Due to the nature of some submissions, some interpretation was necessary to apply these categories. Being in agreement does not mean the submitter did not offer suggestions for improvement in response to other questions but that they did not suggest their support was contingent on those suggestions appearing in the final regulations.

Part B

This section provides a summary of key issues raised in submissions and our recommendations in response to those submissions. Submissions on the proposed NES have been grouped and analysed under the following headings:

- responsibility for the proposed NES
- threshold for resource consent
- permitted activity rule and conditions
- indoor tyre storage
- exemptions from the NES
- other issues.

For each issue, this report provides an overview of policy intent and what was consulted on, a summary of key policy issues in submissions, analysis, and recommendations for the proposed NES.

Section 4: Responsibility for the proposed NES

What was consulted on

The proposal set out in the proposed NES consultation document was that regional councils be responsible for implementing and administering the NES, rather than territorial authorities as proposed in the 2017 NES proposal.

Overview of submissions

Of the 44 submitters who responded to this question, 73 per cent were of the view that regional councils should lead implementation of the NES. Only 11 per cent disagreed with the proposal and the rest were neutral. The main reasons given for supporting the proposal were alignment of functions between the NES and the role of regional councils, and the anticipated greater consistency of approach nationally and across regions.

Many submitters thought the roles, functions and responsibilities of regional councils were more aligned with management of tyres than territorial authorities. For example, one submitter stated, “the risks with respect to the contamination of land and water resulting from the storage of tyres are a good fit to the regional councils’ responsibilities”, a view shared by several submitters. Some submitters noted that regional councils generally have more experience, expertise and capacity, existing processes and powers, and resources to take on this role than territorial authorities.

Some submitters approved of the clarity on existing use rights, which would mean existing stockpiles would be addressed. Regional councils were seen to have relevant monitoring and enforcement regimes and be well placed to deal with complaints and regulatory action. It was noted they already have a role in relation to silage stacks. Several submitters argued that regional councils would be more consistent in their decision-making, both nationally and regionally, than territorial authorities.

An iwi submitter, answering this question in the affirmative, considered that, in addition:

- there should be opportunities to transfer power from the regional council to the local iwi (s33 of the RMA) in relation to management of tyre stockpiles

- the NES should require tyre stockpiles be jointly managed unless the iwi authority opts out (ss36B–36E of the RMA).

Those submitters who disagreed with the proposal made the following points.

One council submitter believed the management of fire risk, as included in the proposed NES, was beyond the current scope of regional councils. In its view, if regional councils managed fire risk, people would assume they also dealt with other flammable materials such as building materials or paint. The council was also of the view territorial authorities were best placed to manage and control the effects of land-use activities by means of land-use rules in a district plan – including setbacks, volumes and storage.

One industry organisation submitter thought territorial authorities and regional councils should handle tyre piles jointly. It added the NES needed to prevent regional councils from imposing different or additional regulation.

Another council argued that land use was the primary concern in relation to tyres and that because land use sits with territorial authorities, territorial authorities should be responsible for the NES.

Key policy issues

The key policy issues identified in submissions and subsequent analysis are:

- Whether regional councils or territorial authorities should lead on managing the risks associated with tyre piles. Acknowledging there is a trade-off, which roles, functions and responsibilities are most important?
- How would responsibility be shared?

Analysis

We recommend regional councils should be responsible for managing the outdoor storage of tyres. The key benefit of making regional councils responsible for this function is they have control of contaminant discharges onto or into land, sea and water. They also issue consents for landfill.

The risks associated with contamination of land and water resulting from storage of tyres fit well with regional councils' responsibilities. Capacity and expertise already lie with regional councils. A key advantage of placing responsibility with regional councils rather than territorial authorities is that existing use rights would not apply.

Regional councils have comprehensive monitoring and enforcement regimes, which makes them well placed to deal with complaints and proactive action. Finally, regional councils have greater resources and monitoring for the purpose of enforcement.

District councils can still manage effects that are not dealt with in the NES under section 43A(5)(b) of the RMA, such as amenity and visual effects.

The regional council option was favoured across the board with most councils, industry groups and district health boards agreeing with it. Recommendations

1. Place responsibility for monitoring and enforcement of the NES with regional councils.

Section 5: Threshold for resource consent

What was consulted on

Submitters were asked: Do you support having a resource consent threshold for the outdoor storage of tyres below the previously proposed 200 m³? Why? In a subsequent question, they were asked whether they supported a 100 m³ or 200 m³ threshold.

Overview of submissions

Question 2, which asked whether the submitter supported a threshold below 200 m³, was answered by 42 submitters. There were 11 'no' responses (26 per cent), 9 'no comment' (21 per cent) and 22 'yes' (52 per cent).

Question 5, which asked for a choice between 100 m³ and 200 m³, was answered by 38 submitters. There were 22 submitters in favour of 100 m³, 5 in favour of 200 m³, 1 in favour of 360 m³ and 10 neutral or no comment.

Most submitters were in favour of a threshold lower than 200 m³, with most of these naming 100m³ as their preference. In general, this group was concerned about reducing environmental impacts and risks.

The minority, who favoured a 200 m³ threshold or higher, were mainly concerned about business requirements for tyre storage (in particular for large tyres).

Submitters overall raised a number of considerations to take into account when making decisions about a threshold. The following are the main considerations that were presented.

Most submitters acknowledged the negative environmental impacts and risks to air, water and soil caused by large tyre piles. The length of time for which the tyres are stored was noted as being related to impacts and risks.

An additional risk mentioned was the risk to human health through contaminated water tanks when contamination is caused by leaching.

One submitter felt New Zealand's tyre regime should be in line with other countries.

Some submitters noted the additional challenges associated with shredded and crumbed tyres, which have greater surface area and are at greater risk of leaching.

There was concern expressed about the costs of disposal, and problems with availability and the cost-efficiency of transport as two potential barriers to staying below the threshold.

One submitter argued a lower limit of 100 m³ would discourage further tyre stockpiles forming in both urban and rural environments, and encourage the reduction of tyre stores being used for silage. However, the submitter also noted the 100-m³ limit might place pressure on the disposal system for legacy tyres within the proposed product stewardship scheme.

Arguments made in favour of a 200 m³ limit were:

- business practicalities
- negligible difference in environmental impact between 100 m³ and 200 m³
- people stockpiling illegally are unlikely to store less than 200 m³
- Fire and Emergency New Zealand (FENZ) guidelines propose a limit of 360 m³ to manage fire risk, that is, at the higher end of the scale.

Differentiated thresholds

A significant point made by several submitters was support for differentiated thresholds. The differences between tyre stacks in the countryside and tyres stored at resource recovery centres/transfer stations/landfills were pointed out. Issues to be considered were

- turnover
- shredded and crumbed tyres
- the purpose of storage (eg, for recycling)
- the size of tyres stored.

These submitters asked whether tyres stored in the countryside and those stored at processing facilities should all be subject to the same threshold, or to an exemption. One justification for treating them differently might be the different levels of harm posed by end-of-life tyres versus new tyres. Submitters expressed the view that processing facilities should be subject to a different threshold or an exemption.

Submitters noted that the system could be designed as:

1. compulsory registration of outdoor storage of tyres up to 200 m³ for up to 12 months and
2. consent for storage of larger volumes.

Some noted the importance of measuring by site not by pile (as proposed in the consultation document). There was also concern about the potential for piles to be spread across multiple sites to avoid the need for planning permission, and the risks associated with this.

Other threshold considerations

Submitters noted that a lower threshold may also impact on amenity values.

Some submitters were of the view that a threshold of 200 m³ represented a significant number of tyres that might be difficult for a site owner to manage effectively in practice. Those operations that required larger stockpiles might have a more specific purpose, and as such would see a consent application as an integral part of their operations.

One industry submitter thought that the FENZ limit for tyre stacks to manage fire risk of 360 m³ would be, in some cases, where larger tyres were involved too low.

A few submitters proposed a mandated matrix for differentiated thresholds containing some of the factors named above, by which an appropriate threshold would be determined for each case.

Additional issues

Submitters raised the following additional issues about fire risk:

- the importance of FENZ being able to access tyre piles
- a possible need for a minimum site size depending on fire risk (eg, in an industrial area FENZ may not be able to access a small site) or arguably the NES or its guidance providing for an adequate setback for preventing the spread of fire to adjacent buildings.

Finally, one council reported it had passed a bylaw for its area, through which it imposed controls on the location of tyre piles and then applied control measures such as separation distances, which increased as the size of the pile increased.

Key policy issues

The key issues identified from the submissions are:

- Does a limit of 100 m³ meaningfully reduce the impacts and risks to air, water and soil over a 200 m³ threshold?
- In principle, should there be different thresholds based on different factors (or is this unworkable)?
- More specifically, should the following be considered grounds to have a separate threshold:
 - shredded and crumbed tyres
 - new and retread tyres
 - those who store large tyres
 - short period of storage (and/or high turnover)
 - recyclers, landfills and tyre businesses (which generally have high turnover)?

Analysis

We recommend the threshold be set at 100 m³ with an exemption for new and retread tyres from this discretionary activity rule (but not the permitted activity rule). The 100 m³ threshold, comprising 1250 tyres, does not have the level of impacts on air, soil and water as the 200 m³ threshold, comprising 2500 tyres. For example, a 200 m³ stack of tyres on fire will emit significantly more toxic fumes than a 10 0m³ stack.

An exemption is practicable as long as it can be easily implemented by council officers. This would not be the case if there were multiple thresholds to address different categories of tyres.

In the case of new and retread tyres, these can generally be easily differentiated by sight.

This exemption will address the concerns of industry submitters who store significant amounts of new or retread standard tyres and/or large tyres. It will impact positively on tyre businesses, businesses storing new tyres and retreading businesses.

This solution focuses the NES on end-of-life tyres, as per the original and current policy intent.

Recommendations

2. Set the threshold for tyre storage at 100 m³ per site. Tyre storage above this threshold will require a discretionary activity resource consent.
3. Exempt new and retread tyres from the discretionary activity rule in the NES (but not the permitted activity rule).

Section 6: Permitted activity rule and conditions

What was consulted on

The proposal was that the NES would introduce a permitted activity rule with associated requirements (permitted activity conditions) for outdoor tyre storage between 40 m³ and the discretionary activity threshold (100 m³ or 200 m³). Tyre storage less than 40 m³ would not be regulated under the NES. The intent of this proposal is to provide a more nuanced rule framework in

the NES, recognising that smaller tyre piles can have significant adverse environmental effects, particularly when located in sensitive receiving environments.

The consultation document set out 'indicative requirements' (conditions) for outdoor tyre storage between 40 m³ and the discretionary activity threshold, as set out in table 3 below.

Table 3: Permitted activity rule – indicative requirements in the NES consultation document

Indicative requirements	Effects to be addressed
a) The height of tyre pile must be no more than 3 m.	Fire hazard and to facilitate effective firefighting in the event of a fire.
b) Tyres must not be located within 50 m from the centreline of a National Grid transmission line.	Fire hazard.
c) Tyres must not be located within 20 m of any water body.	Discharge of contaminants to waterbodies (through leaching and as runoff in the event of fire), pests and visual impacts.
d) Tyres must not be located within 50 m of the coastal marine area.	Discharge of contaminants to coastal marine area (through leaching and as runoff in the event of fire), pests and visual impacts.
e) Where this requirement is complied with, compliance with c) and d) is not required: f) Tyres must be stored on sites which have impervious surfaces and where suitable bunds are provided to prevent contaminants from being washed or spilled into natural ground or entering any piped stormwater systems or stormwater ground soakage.	Discharge of contaminants to waterbodies (through leaching and as runoff in the event of fire) and pests.

Non-compliance with the conditions above would require resource consent as a discretionary activity.

Overview of submissions

Introduction of permitted activity rule

There was strong support for the introduction of a permitted activity rule with associated conditions in the NES, with 35 submitters (83 per cent) indicating their support for the permitted activity rule and only three submitters in opposition.⁴ Key reasons submitters supported the introduction of a permitted activity rule in the proposed NES include that it:

- recognises that smaller amounts of outdoor tyre storage can have significant adverse environmental effects, particularly when located within and near sensitive receiving environments
- provides a means to set appropriate and consistent controls for outdoor tyre storage proportionate to the overall risk
- provides an opportunity to improve practices and regulate smaller outdoor tyre storage
- provides a threshold for monitoring and enforcement of smaller outdoor tyre storage

⁴ Four submitters did not state their support or opposition to the permitted activity rule.

- reflects that a set of permitted activity conditions is both efficient (reduced consenting costs) and effective (robust conditions will ensure good environmental outcomes).

Some submitters noted their support for the introduction of a permitted activity rule was conditional on tyres used for farm silage being exempt. This was to avoid unnecessary consenting and compliance costs (this exemption is discussed further in [section 8](#)).

Submitters that opposed the permitted activity rule focused on the impacts on tyre businesses (tyre warehouses and retreading plants), compliance issues for industries with larger truck/machinery tyres, and general opposition to the proposed NES. As discussed further in [section 5](#), there were requests for tyre businesses involved in the supply of new and retreaded tyres to be exempt from the proposed NES, including the permitted activity rule.

The 40 m³ threshold

Most submitters indicated general support for the 40 m³ threshold in the proposed permitted activity rule. For example, it was noted that 40 m³ is a suitable threshold for managing the outdoor tyre storage through a permitted activity rule because tyre storage this size and above has the potential for adverse environmental effects that should be regulated under the RMA.

However, a number of submitters sought clarification on the rationale for the 40 m³ threshold. Some submitters raised concerns this threshold was too high to adequately manage environmental and fire risks, noting that it equates to around 500 standard passenger tyres. As such, there were requests to further consider the appropriateness of this threshold given the potential risks associated with such a large number of tyres. There were also concerns raised the permitted activity threshold could be interpreted as a 'pollute up to' volume and therefore the threshold should be relatively small and conservative to ensure this does not occur.

Submitters also identified potential difficulties assessing compliance with the 40 m³ threshold and potentially counting such a large number of tyres. Submitters noted the visual appearance of tyre storage of 40 m³ would be quite different for whole tyres compared to chipped and shredded tyres, which would prove challenging when assessing compliance. As such, there were requests for a standard way of measuring the threshold. Submitters also noted whole tyres posed less risk than shredded tyres through contaminant leaching, and therefore the NES permitted activity rule should apply tighter controls to the latter.

Conversely, some industry submitters opposed the 40-m³ threshold as being too low; noting this would affect a large number of tyre businesses and industries that are required to store large machinery tyres on site. For example, one submitter noted the 40-m³ threshold might equate to only 10 large machinery tyres.

Some submitters also emphasised the need to require the threshold to apply to **the whole site** to ensure it could not be circumvented by having multiple tyre piles on one property that were collectively greater than 40 m³. There were requests to amend the rule to refer to outdoor tyre storage with a **total** volume of 40 m³ to reduce confusion and avoid potential loopholes in implementation.

Proposed 'indicative requirements' (permitted activity conditions)

While some submitters expressed a view the 'indicative requirements' (permitted activity conditions) seemed reasonable and sufficient to address adverse effects, other submitters highlighted a number of potential interpretation and implementation issues and requested a number of changes. The key message in submitter feedback was the permitted activity conditions in the proposed NES needed to be sufficiently clear and certain to ensure there were no ambiguities or potential 'loopholes' that could lead to unintended outcomes.

A number of submitters wanted the setbacks to be more aligned with those in the Waikato Regional Council publication *Guidance for storage and stockpiling end-of-life tyres for local government* (the WRC Guidelines). The WRC Guidelines include much larger setbacks from the Coastal Marine Area (250 m) and waterbodies (100 m), which some submitters supported. Conversely, some submitters indicated their preference for the CMA and waterbody setbacks in the NES consultation document (50 m and 20 m, respectively) on the basis they were more workable and pragmatic than those recommended in the WRC Guidelines.

The sections below identify more specific issues raised in submissions regarding the indicative requirements outlined in the consultation document.

Tyre pile height

There was a request to increase the permitted tyre pile height to 4 m to accommodate extra-large vehicle tyres. One submitter noted some industry-specific tyres were in excess of 3 m in diameter and would therefore exceed the permitted activity standard if stood upright. However, in general, submitters indicated support for the 3 m-height limit, noting this standard could generally be complied with and would help improve health and safety.

Transmission lines and National Grid infrastructure

Submitters indicated general support for the 50-m setback from transmission lines and other National Grid infrastructure. For example, Transpower stated in its submission this setback was appropriate as the distance would capture the area where the conductors (wires) were located at maximum swing. Depending on the line configuration, Transpower noted that conductors could swing out to 39 m (for the 95th percentile span) and the additional 10 m would provide added assurance and certainty that outdoor tyre storage over 40 m³ would not be directly under the conductors.

Waterbodies

A number of submitters raised concerns that a 20-m setback was insufficient to protect waterbodies from the adverse effects of outdoor tyre storage. For example, it was noted a 20-m setback provided limited ability to intercept runoff and prevent contaminants from entering waterbodies.

There were requests to increase the setback to waterbodies to 50 m, consistent with the coastal marine area (CMA) setback, with some noting that freshwater waterbodies were more vulnerable to contaminants from tyre storage than coastal waters as there was less dilution. As noted above, some submitters also requested the setbacks to waterbodies be more aligned with the WRC Guidelines (100 m), which were deliberately conservative based on the high risk of significant adverse effects on waterbodies in the event of a tyre fire.

Other issues raised in relation to setbacks to waterbodies include:

- potential for this condition to apply to aquifers that were less than 20 m below the ground and requests to refer to 'surface waterbody' to better reflect intent
- requests for greater setbacks to bores or water supplies used for consumptive purposes.

Coastal marine area

A number of submitters requested the coastal marine area setback be increased to 250 m, consistent with that recommended in the WRC Guidelines. It was noted the rationale for the WRC Guidelines setback was based on a concern from Waikato District Health Board regarding exotic pests; namely, the risk of re-introduction of the saltmarsh mosquito, which had required an expensive government-funded eradication programme. One submitter also requested the proposed 50-m coastal marine

area setback be reviewed to take into account potential climate change effects in coastal areas, and potentially increased on that basis.

Impervious surfaces and bunds

Submitters raised a number of concerns with proposed requirement e) in the NES consultation document, which would exempt tyre storage from complying with the waterbody and coastal marine area setbacks if located on impervious surfaces and where suitable bunds were provided. There were some general concerns raised this condition was not sufficiently certain, and inadequate to manage adverse effects. For example, there were concerns raised that:

- there are no requirements to treat the water captured by the bund in order to avoid the risk of contaminants entering stormwater systems
- stormwater banded on an impervious surface will eventually breach the bund, releasing trapped contaminants into the receiving environment
- there should still be some minimum setbacks to waterbodies and the CMA regardless of whether tyres are located on impervious surfaces and banded.

As such, there were requests for the indicative condition e) to be more certain and robust, including:

- requirements to treat stormwater captured by the bund
- defining impervious surfaces and suitable bunds
- requirements for minimum holding capacity.

There were also requests for implementation guidance to address these matters, including specific guidance on calculating the appropriate size of the holding capacity for bunding or stormwater detention ponds that would be required to contain contaminant runoff in the event of a fire.

Conversely, there was also some support for proposed requirement e). One submitter suggested requirement e) should allow for discharge to stormwater/groundwater soakage systems where these were located away from bores used for consumptive purposes. This was considered important as many rural businesses do not have access to municipal sewerage systems.

There was a request from one submitter for requirement e) to apply only to tyres before processing, as stock turnover and movement at tyre plants, stores and warehouses should negate the need for impervious surface requirements and bunding.

Additional conditions and requirements

In addition to the issues raised with the 'indicative requirements' in the proposed NES consultation document, submitters identified a number of areas where they considered additional conditions or requirements were needed to adequately address the adverse environmental effects of outdoor tyre storage. These included requests for permitted activity conditions to require outdoor tyre storage to avoid, or to be restricted in, the following areas:

- within or adjacent to an archaeological site, Māori heritage site, or other heritage site
- Significant Natural Areas and/or areas of significant indigenous vegetation and significant habitats of indigenous fauna
- community drinking-water supplies
- domestic water supply bores
- ephemeral flow paths
- flood management areas

- areas of shallow groundwater
- state highways (50 m away due to impact of fire smoke on traffic movements)
- boundaries (for fire risk and amenity reasons, discussed further below).

Other additional permitted activity requirements sought in submissions include:

- provision of bond to secure performance of condition
- a maximum time limit for tyre storage (given the increased risk of leaching over time)
- a condition that tyres must not be buried
- separation distances between tyre piles, if these are to be stored in more than one pile on the same site.

Fire risk

A number of submitters raised concerns about the limited measures to address fire risk in the indicative requirements, including no requirement to address the Fire and Emergency New Zealand (FENZ) requirements for storage of tyres. There were a number of requests for the conditions to better address fire hazards. Suggestions to better manage fire risk included:

- requirements for tyre storage to be fenced and access controlled (to reduce risk of arson)
- requirements for tyre storage to be separated from other activities and buildings on a site, and set back from boundaries and so on
- requirement to comply with FENZ Guideline Prevention and Containment of Fire in Open Air Storage
- general requirements for operators to avoid and/or mitigate potential fire risk, including installation of fire safety systems
- providing access for firefighting vehicles.

Amenity effects

While most submitters agreed the proposed NES should be the responsibility of regional councils, a number raised concerns about the indicative requirements not adequately addressing amenity effects and sensitive receptors (typically matters addressed in a district plan). For example, submitters raised concerns that 40 m³ is a high threshold within and/or near residential areas and sought greater control of outdoor tyre storage in residential areas. Similarly, there were requests for the proposed NES to require outdoor tyre storage to be located in industrial areas or zones where the amenity effects would be anticipated or could be managed. There were also general requests for the conditions to better address amenity effects.

There were requests for the proposed NES to require, or encourage, setbacks to sensitive receptors such as schools, hospitals, marae and rest homes. As noted above, some submitters expressed their support for the setbacks recommended in the WRC Guidelines, which state that outdoor tyre storage should be prohibited within 500 m of residential areas and within 1000 m of any school, hospital, marae or rest home.

There were also some concerns the indicative permitted activity requirements in the NES consultation document did not address amenity effects associated with pests. It was noted tyre storage provided a perfect environment for mosquito breeding (sheltered, still water). There were corresponding requests for the proposed NES to include greater requirements around pest and mosquito management for any outdoor tyre storage above the 40-m³ threshold. Submitters also requested requirements preventing outdoor tyre storage being located near airports and ports due to the increased risk of foreign mosquitos establishing within outdoor tyre storage and spreading.

Key policy issues

The key policy issues identified in submissions and subsequent analysis are:

- whether the proposed NES should include a permitted activity rule
- the threshold for the permitted activity rule
- ensuring the 'indicative requirements' are fit for purpose
- whether the permitted activity conditions need to:
 - address other sensitive areas and/or resources
 - include greater requirements to manage fire risk
 - address amenity effects
- whether the proposed NES should control (or prohibit) the burying of tyres.

Analysis

Introduction of permitted activity rule

There was strong support from submitters (approximately 80 per cent) for introducing a permitted activity rule in the proposed NES. There was general agreement with the rationale for the permitted activity rule outlined in the NES consultation document, that is, that there needs to be greater restrictions on outdoor tyre storage in sensitive, receiving environment areas. The permitted activity rule was also seen as an effective and efficient approach to regulating smaller outdoor tyre storage to achieve good environmental outcomes, without unnecessarily requiring resource consent and associated compliance costs when effects are appropriately managed. We therefore recommend the proposed NES include a permitted activity rule as proposed, with some refinements to the thresholds and conditions as discussed below.

Requests for exemptions from the NES for tyre businesses involved in the supply of new and retreaded tyres are discussed in [section 5](#).

The threshold for the permitted activity rule

There was support in submissions for a 40 m³ threshold for the permitted activity rule, although a number of submitters sought clarification on the rationale for this threshold. Some submitters also expressed concern this threshold was too high, and argued that a conservative approach was warranted given the potential risks of not regulating tyre storage under the threshold.

The purpose of having a threshold for the permitted activity rule and conditions to apply to outdoor tyre storage is to avoid every single tyre stored outside having to comply with permitted activity conditions, as this would create practical compliance issues with limited environmental benefits. The 40-m³ threshold proposed for the permitted activity rule is estimated to equate to approximately 500 stacked standard passenger tyres (EPUs).

It is acknowledged there is the potential for outdoor tyre storage below the 40 m³ threshold to result in adverse environmental effects (eg, when located immediately within or adjacent to a waterbody). A conservative approach is also warranted given the potential risk the 40-m³ threshold is interpreted as a 'pollute up to' volume, as highlighted in submissions. On the other hand, there is no strong evidence outdoor tyre storage below 40 m³ is having adverse effects that warrant national regulation through a NES.

On balance, we recommend the permitted activity threshold is reduced to 20 m³, or approximately 250 EPUs. While this volume may seem arbitrary, it is intended to be a pragmatic threshold in the

absence of any agreed national or international standard. This threshold simply acts as a trigger for any tyre storage to comply with the permitted activity conditions (which are largely setbacks). As such, the 20-m³ threshold is simply a point where operators will need to assess their tyre storage against the permitted activity conditions in the proposed NES and confirm they can comply with them.

It is expected that existing tyre storage over 20 m³ will generally be able to comply with the permitted activity conditions where the sites are already undertaking good management practices and avoiding sensitive environments. However, it is also acknowledged that some sites may find it difficult to comply with the setbacks (eg, industrial sites near urban streams) and may incur resource consent requirements under the proposed NES.

We also note there are additional controls and restrictions that can address the adverse effects of smaller volumes of outdoor tyre storage. In particular:

- District councils can still manage the amenity effects associated with outdoor tyre storage (as discussed above) and may include rules that are more stringent.⁵
- The proposed NES does not override the general requirement in the RMA to not discharge contaminants into water (section 15(1)(a)) and the general duty to avoid, remedy or mitigate adverse environmental effects of an activity (section 17(1)). Regional councils therefore retain the option of using enforcement provisions in the RMA in cases where volumes of outdoor tyre storage less than 20 m³ (250 tyres) are clearly resulting in adverse environmental effects. For example, the dumping of tyres into a stream is a clear breach of section 15(1)(a) of the RMA and councils can address this through a range of enforcement mechanisms, from an abatement notice through to prosecution.

Overall, 20 m³ is considered to be an appropriate, pragmatic threshold for the permitted activity rule and we recommend this lower threshold is adopted in the proposed NES.

Proposed 'indicative requirements' (permitted activity conditions)

Tyre pile height

The indicative requirement for the height of tyre piles to be no more than 3 m in height is intended to help address fire risk and facilitate effective firefighting in the event of a fire. The maximum height of 3 m for tyre piles is recommended by FENZ in its draft guideline *Prevention and Containment of Fire in Open Air Tyre Storage* to help manage fire risk and stability issues. This guideline states that limiting the height of the tyre pile will help:

- ensure it is stable
- restrict the available fuel in event of fire
- with firefighting when combined with separation distances.

The recommended 3 m height limit is also consistent with Australian guidelines relating to tyre storage, which recommend tyre piles should not exceed 3 m in height due to the potential for instability.⁶

⁵ For example, the Hastings District Plan includes a permitted activity condition for tyre storage not to exceed a footprint of 10 m² or be stored above a height of 1.5 m.

⁶ Tyre Stewardship Australia (2019). *Best Practice Guidelines for Tyre Storage and Fire and Emergency Preparedness*, refer: <https://www.tyrestewardship.org.au/static/uploads/files/15123-tsa-guidelines-for-tyre-storage-report-mar19-wfcdybyfrvwo.pdf>

Submitters were generally supportive of this indicative requirement. One submitter requested the maximum height be increased to 4 m as some large machinery tyres were in excess of 3 m in diameter and would therefore not comply with the proposed NES when stood upright. We also understand industries often need to store large tyres upright for practical reasons and therefore there is a concern the 3 m blanket height limit could introduce unnecessary consent requirements and compliance costs.

We agree the proposed NES should recognise and accommodate large machinery tyres that do not present the same risk of fire and instability as stacked tyres. However, we consider this is best achieved through a specific exemption rather than a general increase to the 3 m height standard recommended by FENZ and Australian guidelines for tyre storage. Accordingly, we recommend the proposed NES retains a permitted activity condition that tyre piles shall not exceed 3 m in height with an exemption for tyres that are higher than 3 m when vertical.

National grid

The indicative requirement for outdoor tyre storage to avoid being located within 50 m of the centre line of transmission lines or National Grid infrastructure resulted from consultation feedback on the 2017 NES proposal. This proposed requirement was generally supported by submitters (including Transpower) and will address other effects in addition to fire (eg, health and safety, security of power supply). Accordingly, we recommend the proposed NES retain the requirement for outdoor tyre storage above 20 m³ to be located no closer than 50 m from the centre line of transmission lines and National Grid infrastructure as a permitted activity condition.

Waterbodies

A number of issues were raised in relation to the indicative requirement for tyre storage to be set back 20 m from a waterbody, with the key issues relating to whether:

- the 20 m setback should be increased (eg, to 50 m)
- there is a need to apply different setbacks to surface water bodies compared to groundwater
- the proposed NES should include more stringent setbacks to waterbodies used for domestic or community water supply.

The WRC Guidelines recommend a 100 m setback to “*any open water course, including a flood plain or wetland*” but do not provide any clear justification as to why such a large setback is required. A 100-m setback for outdoor tyre storage to all waterbodies is expected to be overly onerous and impossible to comply with on some sites, particularly given the broad definition of waterbody⁷ in the RMA, which includes intermittently flowing streams and watercourses.

However, there would be benefit in clarifying how the setback applies to different waterbodies and applying targeted setbacks to surface waterbodies, groundwater and any waterbody used for domestic or community drinking-water supply. Targeted setbacks would provide more vulnerable waterbodies with increased protection, particularly in situations where the environmental impact of leaching from outdoor tyre storage would be more severe. Specifically, we recommend the proposed NES include requirements for outdoor tyre storage above 20 m³ not to be located within:

- 20 m of any surface waterbody or wetland
- 50 m of any waterbody used for domestic or community drinking-water supply

and to be located within:

⁷ Waterbody is defined in the RMA as “**water body** means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area”.

- an area where the base of the tyres is at least 1 m above the highest level of the groundwater table.

This will also help provide greater clarity around the setback requirements for waterbodies, to assist with compliance. We also recommend implementation guidance that we will develop will provide practical direction on how to comply with the setback requirements in the proposed NES.

Coastal marine area

There were a number of requests to increase the coastal marine area setback to 250 m, consistent with the WRC Guidelines. The rationale for this appears to be based on the potential risk of foreign mosquitos entering the country and establishing in tyre piles, with a specific concern raised by the Waikato District Health Board regarding the risk of re-introduction of saltmarsh mosquito.

Tyre piles can provide a suitable breeding ground for mosquitos and thereby create the risk of spreading disease. New Zealand has few mosquitos capable of spreading disease, although exotic species capable of carrying serious diseases are known to breed in tyres and are often discovered at or near ports.⁸ As such, we consider it would be beneficial to include a greater setback distance to ports, where the risk of exotic pests and disease is the greatest, rather than a blanket 250 m setback to the coastal marine area, which would be overly onerous. We therefore recommend that:

- the requirement for outdoor tyre storage to be set back at least 50 m from the coastal marine area is retained as a permitted activity condition in the proposed NES
- the proposed NES includes an additional requirement for outdoor tyre storage greater than 40 m³ to be set back 100 m from the boundary of any port. (Ports are generally zoned for that purpose and the National Planning Standards include a port zone, so assessing and achieving compliance with this requirement is expected to be relatively straightforward.)

Impervious surfaces and bunds

The proposed requirement e) in the NES consultation document was intended to provide an alternative pathway to achieve compliance in situations where outdoor tyre storage cannot comply with the setbacks for the coastal marine area and waterbodies. Requirement e) stated that compliance with c) and d) is not required if tyres are stored on sites with impervious surfaces and where suitable bunds are provided to prevent contaminants from being washed or spilled into natural groundwater or entering any piped stormwater systems or stormwater ground soakage. This requirement would potentially avoid the need to obtain resource consent for outdoor tyre storage on sites close to waterbodies or the coastal marine area where good management practices were being implemented on site. However, submitters identified a number of issues with this proposed requirement, both in terms of its effectiveness and practical compliance issues. Specifically:

- potential risk of adverse effects from untreated water and breach of bunds
- the need for minimum setbacks to apply regardless of site management practices
- practical compliance monitoring issues, as there are some aspects of the condition which involve an element of discretion and would warrant a site visit to assess compliance (eg, to determine that water is being disposed of properly).

Overall, we conclude the indicative requirement e) is likely to be problematic to monitor as a permitted activity condition. We also conclude the potential risks in terms of compliance/adverse effects are likely to be greater than the potential benefits in terms of reduced compliance costs for some sites. As such, we recommend this indicative requirement be removed from the proposed NES.

⁸ Firecone (2004), *Management of end-of-life tyres*. Prepared for the Ministry for the Environment. Ministry for the Environment (2014).

The implementation guidance will provide practical advice on how to manage the discharge of contaminants from outdoor tyre storage through conditions and methods such as bunding and treatment of trapped stormwater.

Additional conditions and requirements

Sensitive receiving environments

Submitters identified a number of areas and receiving environments in the proposed NES where they considered additional controls were necessary. Many of these areas have significant values and would be sensitive to effects from outdoor tyre storage of any volume, including Significant Natural Areas and sites of significance to Māori. However, we consider adverse effects on these sites are best managed through local controls in regional and district plans. This is because the values associated with these sites and the most appropriate method to manage them are generally site-specific. Introducing a nationally consistent approach through the proposed NES could have unintended consequences. For example, it could lower the protection given to a site with locally significant values in the case where the underlying plan had more stringent requirements (eg, where the deposition of waste in that area was a non-complying or prohibited activity).

Plan rules could still address the potential effects of outdoor tyre storage on these sites under section 43A(5)(b) of the RMA. This clause allows council plan rules (regional or district) to deal with effects of an activity (ie, in this case, outdoor tyre storage) that are not addressed in the proposed NES (eg, historic heritage, Significant Natural Areas). We consider this is a more effective and efficient approach than the proposed NES including permitted activity conditions to address a wider range of potentially sensitive receiving environments.

Fire risk

A number of submitters sought more stringent, permitted activity requirements to manage fire risk, including requiring compliance with FENZ guidelines. However, the draft FENZ guidelines for the prevention and containment of fire in open-air tyre storage include a number of subjective and site-specific considerations that would be problematic to impose as permitted activity conditions. For example, the draft FENZ guidelines include considerations relating to potential ignition sources on site, security, land slope, and water supply for firefighting, which would be difficult to adequately address through permitted activity conditions. Regional councils are also likely to have limited expertise and resourcing to assess compliance with fire risk-related permitted activity conditions for all outdoor tyre storage greater than 20 m².

As such, we consider fire risk is best addressed through the consent process when triggered by either non-compliance with the permitted activity conditions relating to fire risk (eg, maximum 3 m height threshold), or when the discretionary activity volume threshold is exceeded. We also recommend the implementation guidance includes more specific advice on how to address fire risk through site-specific conditions and requirements. FENZ supports this approach and we will work with FENZ to develop the implementation guidance.

Amenity effects

A number of submitters requested the proposed NES include permitted activity conditions to better manage effects on amenity. The proposed NES will be a regional council responsibility and therefore will not directly address amenity effects, as this is primarily a function of territorial authorities.

Territorial authorities will still be able to manage adverse amenity effects from outdoor tyre storage under section 43A(5)(c) of the RMA, which allows plan rules to address effects not dealt with in the proposed NES. The controls in the proposed NES may also help manage effects on amenity indirectly

through requirements for outdoor tyre storage to be set back from the coastal marine area, waterbodies and so on.

Burying tyres

A number of submitters were concerned about the risks of tyres being buried, in particular by people trying to avoid reaching the NES threshold. They proposed a permitted activity condition to prevent burying of tyres.

The proposed NES does not address tyre burial. The reason for this is that bylaws can be used to control the activity of burying tyres. For example, section 56 of the Waste Minimisation Act 2008 (WMA) enables territorial authorities to make a bylaw to regulate the collection, transportation and deposition of waste. Councils also have the power to make bylaws under section 146 of the Local Government Act 2002 (LGA) to regulate solid waste management.

Allowing burial of tyres under the proposed NES would potentially create a loophole for tyre storage. On balance, we recommend burial of tyres not be included in the permitted activity rule but that our implementation guidance addresses how councils can use other legislation to address this issue.

Recommendations:

4. The permitted activity rule is retained in the NES.
5. The threshold for the permitted activity rule is reduced to 20 m³.
6. The permitted activity conditions are refined as follows:
 - tyre piles shall not exceed 3m in height with an exemption for tyres that are higher than 3m when vertical
 - increased setbacks for outdoor tyre storage to bores or waterbodies used for domestic or community water supply
 - an additional requirement for outdoor tyre storage greater than 20m³ to be setback 100m from the boundary of any port.
 - proposed requirement (e) regarding bunding in the NES consultation document is removed.

Section 7: Indoor storage of tyres

What was consulted on

The NES consultation document sought feedback on the desirability of widening the scope of the proposed NES to regulate indoor tyre storage. The NES consultation document referenced two submissions on the 2017 NES proposal that requested widening the scope of the proposed NES to include indoor tyre storage, noting examples where tyres had been stockpiled in abandoned warehouses, and councils were faced with the cost of removing the tyres and making the land useable again.

Overview of submissions

Forty-six submitters responded to the question about the desirability of extending the scope of the proposed NES to regulate indoor tyre storage. Of those 46 submitters, 23 submitters (50 per cent) expressed support for including indoor tyres, whereas 10 submitters (21 per cent) did not support

this proposal. Thirteen submitters (28 per cent) expressed a neutral view or did not expressly state their support for, or opposition to, this proposal.

The main reasons submitters supported extending the scope of the proposed NES to regulate indoor tyre storage include:

- the effects of indoor and outdoor tyre storage were similar, therefore the proposed NES should apply to both
- indoor tyre storage also posed a significant risk in the event of a fire, particularly where there were not suitable fire protection controls in place
- regulating indoor tyre storage would provide a means to control fire runoff before it enters stormwater systems, where it could have significant adverse effects
- indoor tyre storage posed a greater fire risk than outdoor tyre storage due to more restricted access, lower air circulation and more fuel to burn where there was no sprinkler system in place.

Submitters in support of regulating indoor tyre storage also highlighted the potential risk that excluding indoor tyre storage from the proposed NES would create greater incentives for operators to store and dispose of tyres indoors. This included the potential risk of tyres being dumped and abandoned in leased properties/warehouses, with the liability left for councils to address. Submitters argued that excluding indoor tyre storage from the proposed NES was likely to simply shift rather than address the problem.

A number of submitters sought to ensure any regulation of indoor tyres through the proposed NES would only apply to the bulk storage of end-of-life tyres and not new tyres, otherwise this could restrict legitimate tyre businesses selling and storing new tyres.

The main reasons submitters did not support extending the scope of the proposed NES to include indoor tyres focused on the risks of adverse environmental effects being significantly less than outdoor tyre storage. In particular, these submitters emphasised that:

- tyres stored indoors were covered and generally on impervious surfaces so the risk of leachate and discharges of contaminants to waterbodies was greatly reduced
- indoor tyre storage was generally much more secure and restricted to the public, therefore the risk of fire due to arson was greatly reduced
- the indoor storage of tyres did not adversely affect amenity – either visual amenity or through providing a habitat for pests.

Some submitters also expressed a view the indoor storage of tyres had no adverse environmental effects and therefore it was inappropriate for the proposed NES to regulate this activity.

Submitters that supported regulation of indoor tyre storage through the proposed NES also made some suggestions on how it should be managed. For example, there were requests for:

- the same requirements for outdoor tyre storage to apply to tyres stored indoors
- indoor tyre storage to be subject to FENZ guidelines
- requirements for indoor tyre storage to have appropriate systems in place (eg, a sprinkler system) to control fire runoff in the event of a fire
- a clear definition of 'indoor storage'.

Some submitters also noted that regulation and enforcement of indoor tyre storage was not well suited to the functions of regional councils under the RMA, and that councils had limited ability to enter buildings under the RMA to assess compliance. As such, there were some corresponding suggestions this function was better suited to district councils, and the issue could be more suitably

addressed through other legislation such as the Building Act 2004, a Local Government Act 2002 bylaw, or the Fire and Emergency New Zealand Act 2017.

Key policy issues

The key policy issues identified through submissions and subsequent analysis are whether:

- the proposed NES should regulate indoor tyre storage
- there are other options to regulate indoor tyre storage that are more efficient and effective.

Analysis

Feedback from submitters expressed mixed views on whether the proposed NES should be extended to regulate indoor tyre storage. On the one hand, submitters expressed the view the adverse effects of outdoor and indoor tyre storage were similar and therefore the proposed NES should apply consistent controls to both to avoid shifting the problem indoors. Conversely, other submitters expressed a similar position to that outlined in the proposed NES consultation document – that indoor tyre storage was more secure, covered and controlled, and therefore did not present the same degree of adverse environmental effects and risks as outdoor tyre storage.

We acknowledge there are examples where tyres have been illegitimately stockpiled indoors and created adverse effects, increased fire risk, and resulted in liability issues. One notable example recently cited in Canterbury is linked to the tyre collector responsible for the Amberley stockpile, which was subject to arson in 2016 and resulted in ongoing enforcement action. The tyre collector is now believed to be storing more than 50,000 tyres in a leased warehouse in Christchurch.

We are also mindful of the potential risk that greater regulation of outdoor tyre storage increases incentives to stockpile tyres indoors. However, we do not recommend the scope of the proposed NES be extended to include indoor tyre storage for the following reasons:

1. The adverse effects of outdoor and indoor storage are different. The risk of adverse effects from the leachate and fire risk are significantly reduced when tyres are stored indoors. These are two significant adverse environmental effects the proposed NES seeks to manage. The main issue associated with indoor tyre storage is fire risk when appropriate systems are not in place, and this can be addressed through other means (discussed further below).
2. There is a lack of evidence indoor tyre storage is a national problem that warrants national regulation. While there may be notable examples of illegitimate tyre collectors storing tyres indoors, this appears to be relatively uncommon. Submitter feedback did not provide evidence that indoor tyre storage was a widespread problem.
3. Indoor tyre storage is largely a liability issue. Landowners should ensure their commercial lease arrangements with tenants address any potential liability issues and clean-up costs.
4. The introduction of national regulation of indoor tyres may result in unnecessary compliance costs for legitimate tyre businesses with established processes to store tyres indoors safely, including systems to address fire risk. These costs are likely to outweigh the benefits associated with national regulation of indoor tyre storage, given this is not a widespread problem.
5. This function is not well suited to the role of regional councils under the RMA. As such, this proposal may require the proposed NES to be administered jointly by regional (outdoor tyres) and district councils (indoor tyres), which would increase complexity and overall implementation costs for councils.

6. Many materials are stored within buildings that pose a fire risk, but are not regulated through the RMA. Therefore, regulating indoor tyre storage through the NES on the basis of fire risk does not seem justified or equitable and could have precedent effects.

Importantly, there are also other regulatory tools available to councils to regulate the storage of tyres inside. In particular, councils have the power to make bylaws under sections 145 and 146 of the Local Government Act 2002 for the purposes of protecting health and safety and regulating waste management. Section 56 of the Waste Minimisation Act 2008 also enables territorial authorities to make a bylaw to regulate the collection, transportation and deposition of waste. While the Waste Minimisation Act does not specifically refer to 'storage' of waste, the reference to collection and deposition of waste would appear sufficient to deal with illegitimate tyre collection operations like the Christchurch example referred to above.

Bylaws enable territorial authorities to consider more than typical land-use controls under the RMA and can therefore address waste stored in buildings more directly. A number of councils have waste bylaws that would appear sufficient to deal with illegitimate indoor tyre storage. For example, the Christchurch City Council Cleanfill and Waste Handling Operations Bylaw 2015, prepared under the Local Government Act and the Waste Minimisation Act, regulates the collection and storage of waste in the city and requires all waste operations to obtain a licence from the council.

In terms of the potential risk, the proposed NES shifts the problem of outdoor tyre storage indoors, it is expected the regulated product stewardship scheme will help to address this problem because it is likely to control who collects and sells waste tyres in large quantities. This is expected to reduce the risk of large quantities of tyres being stored inside.

Therefore, we conclude the scope of the proposed NES should not be extended to indoor tyre storage as the costs may outweigh the benefits and there are other mechanisms to address indoor tyre storage, which councils can use more proactively if the need arises. However, we recommend the implementation guidance addresses how councils can use other mechanisms and legislation to address indoor tyre storage to complement the controls on outdoor tyre storage in the proposed NES. There may also be an opportunity to review how the Waste Minimisation Act regulates the storage of waste in the future to provide greater certainty that councils can regulate this activity through bylaws.

Recommendations:

7. That the scope of the proposed NES does not include indoor storage.

Section 8: Exemption for farm silage tyres

What was consulted on

The proposed NES would exclude farm silage tyres from the requirement to obtain a discretionary resource consent when the volume of tyres is above the agreed threshold (100 m³ or 200 m³). This would apply regardless of whether the tyres were on silage stacks or being stored in the off-season. However, farm silage tyres would still be subject to the permitted activity rule and conditions discussed above in section 6.

This proposal is consistent with the intent of the 2017 NES proposal, which stated tyres used legitimately for silage cover would not be affected by the proposed NES. This assertion was made on the basis these tyres would be under the proposed discretionary activity threshold in the 2017 NES

proposal (200 m³). However, feedback and advice from Federated Farmers suggested a large number of farms would require resource consent if this threshold was in place (approximately 10–15 per cent of New Zealand farms), and this could result in unnecessary, and potentially significant, compliance costs.

Overview of submissions

There were 46 submitters that responded to the question about the proposed resource consent exemption for a volume of farm silage tyres above the agreed discretionary activity threshold. Of those 46 submitters, 22 submitters (48 per cent) expressed support for the proposed farm silage tyre exemption and 12 submitters (26 per cent) did not support this proposal. Thirteen submitters (28 per cent) expressed a neutral view or did not expressly state their support or opposition for this proposal.

The primary reasons submitters supported the proposed exemption for farm silage tyres from requiring a resource consent for a discretionary activity in the proposed NES include:

- the risk of adverse environmental effects is less for these tyres and they are less likely to be near waterbodies and so on
- not providing an exemption would hinder the legitimate reuse of tyres, which is what the proposed NES is trying to achieve and end-of-life tyres are a valuable resource for covering silage stacks
- farm businesses should not be constrained by the potential risk of arson as this is not something they can control
- farmers have a vested interest in avoiding environmental degradation on their farms and they use tyre storage practices to manage potential adverse effects
- an exemption for farm silage tyres would avoid unnecessary regulation of farming operations.

Submitter support for the proposed exemption for farm silage tyres was generally on the basis these tyres would still be subject to the permitted activity rule. Some submitters noted it was important the permitted activity rule conditions work together with existing regional controls, as these are focused on managing leachate from silage rather than tyres. For example, one submitter stated that:

“The regional plan rules cover the effects of leachate from silage rather than the effects of tyres and we have no control over the tyres when they are not on the silage pit. Therefore, we support the exemption for silage tyres provided it is subject to the proposed permitted activity rule – whether they are on silage stacks or are being stored off season”.

A number of submitters emphasised the importance of minimising the risk of potential loopholes through this exemption and there was general support for clear definitions and supporting implementation guidance as proposed in the NES consultation document.

The main reasons submitters opposed the proposed exemption for farm silage tyres from the consent requirement for discretionary activity in the proposed NES include:

- existing controls in regional plans relating to silage, production and leachate were considered effective enough to control any adverse effects
- an exemption would result in inequitable regulation of adverse effects and inconsistent application of the proposed NES
- there were a lot of issues with storage of tyres in rural areas close to waterbodies and the proposed NES should manage these

- an exemption would result in adverse effects and undermine the benefits sought through the proposed NES
- an exemption might encourage disposal and illegal dumping of tyres on farms and simply shift (and potentially increase) the tyre storage problem
- there was potential for loopholes as it was difficult for councils to determine exactly how tyres were being used on farms.

Clarification was also sought as to whether the permitted activity rule applied to farm silage tyres, regardless of the tyre storage volume. Specifically, submitters sought clarification on whether larger volumes of farm silage tyres over the discretionary activity threshold would still be subject to the permitted activity conditions.

Another submitter suggested the supporting product stewardship scheme for tyres should encourage farmers to be responsible with their end-of-life tyres.

Key policy issues

The key policy issues identified through submissions and subsequent analysis are:

- whether there should be an exemption for farm silage tyres from the volume threshold for discretionary activity in the proposed NES
- the scope of any exemption for farm silage tyres and how to ensure there are no unintended consequences or loopholes.

Analysis

An exemption for farm silage tyres

Unlike most other 'active uses' of tyres, farm silage tyres often need to be used in large numbers to cover silage stacks. They are then stored in the off-season when not being used for this purpose. This is a widespread activity on farms throughout New Zealand and presents some challenges for the NES. On the one hand, it is desirable for this legitimate reuse of end-of-life tyres to continue without unnecessary regulation and compliance costs through the NES. However, there is a need to ensure environmental effects of farm silage tyres are still appropriately managed, and that any exemption is not used as a loophole that potentially encourages dumping and disposal of tyres on farms.

The main consideration for the farm silage tyre exemption from the discretionary activity rule is whether the NES should take an entirely equitable approach, which treats outdoor tyre storage the same regardless of its purpose or use, or whether a more pragmatic approach is required that takes into account compliance costs and degree of risk. It can be argued that tyres stored for future use as silage cover should be subject to the proposed NES just like tyres being stored for an alternative future purpose (eg, recycling). Otherwise, this could be seen to favour the farming industry and be inconsistent with the effects-based nature of the RMA.

Conversely, there are a number of reasons why an alternative approach under the NES for farm silage tyres is justified. In particular:

1. **It could result in a significant increase in consenting and compliance costs that are unlikely to be justified in terms of environmental benefits.** According to Federated Farmers, the 200-m³ threshold could affect nearly 7000 farms (10 to 15 per cent of livestock farms) using tyres for silage production. This could potentially result in significant costs for these farmers from obtaining a resource consent, without necessarily improving their site management practices and associated environmental outcomes.

2. **There is no clear evidence that tyres used for silage cover or storage are causing significant adverse environmental effects**, either while in use or when being stored off-season. While some submitters raised concerns about the adverse effects of farm silage tyres, this was not substantiated with clear examples and evidence. The lack of controls in regional plans directly related to farm silage tyres also indicates these are generally not resulting in adverse effects.
3. **Existing best practice and controls on silage (including regional council rules) will help to manage potential adverse effects from farm silage tyres.** Most regional plans have rules on the location of silage (eg, setbacks to waterbodies) to prevent leachates entering waterbodies. These rules are likely to mitigate the adverse effects of farm silage tyres indirectly by controlling the proximity of these tyres to sensitive environments, such as waterbodies. Feedback from farmers also suggested farm silage tyres are generally stored adjacent to silage stacks when not being used for silage cover.

Most importantly, the permitted activity rule and conditions in the NES discussed in [section 6](#) will apply to farm silage tyres, regardless of the volume being stored on site. This will ensure the adverse effects of farm silage tyres are appropriately managed, particularly through the required setbacks to waterbodies, which should complement existing regional controls for silage. Support from submitters for an exemption for farm tyre silage from the discretionary activity rule was generally on the basis these tyres would still be subject to the proposed permitted activity rule in the NES.

On balance, we recommend the exemption for farm silage tyres from the discretionary rule is included in the NES. However, it is important the scope and details of this exemption are clearly defined in the NES to avoid loopholes, perverse incentives and unintended consequences.

The scope and wording of an exemption for farm silage tyres

The exemption of farm silage tyres from the discretionary rule needs to be certain and enforceable to ensure adverse environmental effects are appropriately managed and potential loopholes avoided. In particular, the exemption of farm silage tyres must:

- **make farm silage tyres distinguishable from other tyre storage** – the NES needs to provide an easy means to distinguish between farm silage tyres being stored in the off-season and tyres being stored on rural land for any other reason
- **be easy to monitor and enforce** – council staff need a clear and enforceable methodology to assess the purpose of tyre storage in rural locations and/or the scale of the silage tyre storage to ensure it is proportionate to the silage stacks on the farm.

To achieve these requirements, the wording of the NES exemption could focus on location and/or numbers of tyres as follows:

- **Location** – feedback from submitters in the rural sector confirms farm silage tyres are generally stored in the off-season next to the silage stacks. As such, there should be a clear visual link between the location of the stored tyres and their intended future use on silage stacks. The NES could specify that farm silage tyres must be located next to silage stacks when these are being stored in the off-season. Tyres not stored next to silage stacks would assume to be stockpiled for another purpose and would not be subject to the NES exemption.
- **Numbers proportionate to use** – only a certain number of tyres are required to cover each silage stack. The NES could include a requirement the number of stored farm silage tyres is proportionate to the size and number of silage stacks on the farm. For example, this could be a standard number of tyres per square metre of silage stack (eg, four tyres per square metre). This would provide farmers and compliance officers a method to determine the maximum number of farm silage tyres on their site, based on the number and size of silage pits, to achieve and assess compliance.

Our recommended approach is that the NES include an exemption for farm silage tyres stored on, or immediately adjacent to, areas and pits used regularly for silage production and storage, in quantities no larger than needed to cover the silage in a single layer (noting there may be more than one silage stack on a farm). We also recommend implementation guidance for the NES include detailed advice and examples to help council officers distinguish between farm silage tyres and tyres on rural sites being stored for other reasons.

Recommendations:

8. That the NES include an exemption to the discretionary activity rule (but not the permitted activity rule) for farm silage tyres stored on, or immediately adjacent to, areas and pits used regularly for silage production and storage, in quantities no larger than needed to cover the silage in a single layer.
9. That implementation guidance includes detail for councils on how to distinguish between farm silage tyres and other stored tyres.

Section 9: Other issues

What was consulted on

For the final question, the NES consultation document asked submitters whether they had any comments on the other aspects of the proposed NES.

Overview of submissions

Most submitters expressed they were broadly in favour of the proposed NES. Several made suggestions about ways to improve the proposed NES. Many submitters took this opportunity to re-emphasise points they had made in response to earlier sections of the consultation document.

A common point made was that a regulated product stewardship scheme was needed, either at the same time as the NES came into force, or instead of an NES. Such a scheme was considered to be a strong lever for managing end-of-life tyres. For example, one submitter stated:

“to introduce [an NES] earlier and with no viable and ethical solution for disposal or recycling across the country, would result in illegal dumping or burial of tyres, a further issue to address and clean up in the future.”

Another submitter stated that:

“there is a risk that if a new regulation is brought in without a concurrent product stewardship scheme for tyres, there may be unintended consequences such as illegal dumping or burying of tyres.”

A few submitters used this question to reiterate their opposition to the proposed NES. For example, one submitter stated that:

“the state has no right to interfere in legitimate business carried out on people’s own property.”

Another submitter raised concerns the NES would impose significant additional consenting requirements, costs and uncertainty on tyre-processing facilities. Another submitter argued imposing a new regulatory cost might be better invested in new technology for managing waste streams (using the example of Waste to Energy).

Two submitters thought existing regional council rules and regulations negated the need for an NES.

While this was not proposed as an alternative to an NES, one submitter suggested the Government set a levy payable on imported, second-hand tyres to help reduce the import of tyres close to their end of life.

Some noted the importance of the proposed implementation guidance and wanted them to be complete at the time of release of the NES.

Several raised a concern about managing burial of tyres, including a suggestion the NES include burial of tyres as a discretionary activity.

One submitter thought there needed to be clarity in the implementation guidance about the definition of active use as opposed to storage. The same submitter proposed a maximum timeframe for outdoor storage should be included to avoid abandonment. It was also suggested the implementation guidance include best practice measures for the storage of end-of-life tyres to avoid contamination.

There were differing views as to whether regional councils should have the flexibility to make NES rules more stringent than the threshold rule and the permitted activity rule. Some industry submitters to the 2017 NES proposal indicated a preference for nationally consistent rules within the proposed NES, rather than allowing plan rules to be more stringent. Conversely, several submitters thought there were cases where more stringent rules should be at least an option for councils.

Auckland/Waikato Fish and Game considered the smaller the amount of tyres, the lower the risk, and that rules should be proportional to risk.

Key policy issues

The key policy issues identified through submissions and subsequent analysis are:

- Should the implementation guidance be released at the same time as the NES is finalised?
- Is an NES valuable in terms of managing the storage of tyres?
- How can the NES be used to avoid abandonment of tyres?

Analysis

Implementation guidance

We recommend implementation guidance be released at the same time as the NES is gazetted, or shortly after. This will help those who store tyres to plan for the NES before it comes into force, including complying with the permitted activity conditions.

Abandonment

We consider the NES as proposed will manage tyre piles to the degree that, if abandoned, they will not be especially costly to remove. In addition, there are bylaw-making powers in the Local Government Act 2002 and Waste Minimisation Act 2008 that allow for management and enforcement of abandoned stockpiles. This will be included in the implementation guidance.

More stringent NES rules

On balance, we recommend the NES should expressly allow regional plan rules to be more stringent. This would extend to the threshold for resource consent and to the permitted activity rule conditions. This would allow for more stringent approaches to the NES if deemed necessary based on factors and risks specific to the locality. For example, if a region has a local, environmental-specific

issue with tyre piles smaller than the 100-m³ threshold, the relevant regional council could introduce a more stringent rule with a reduced threshold for resource consent, or increased setbacks as a permitted activity rule and conditions.

However, any more stringent rule proposed by regional councils would need to follow the usual RMA plan rule-making process, including justifying the more stringent provisions in the context of the particular region under section 32(4) of the RMA. As such, more stringent plan rules would need to be based on evidence that the NES controls are inadequate. Although this may reduce regulatory certainty to some degree, this is considered to be low risk given the limited specific controls for outdoor tyre storage in regional plans currently.

Recommendations:

10. That implementation guidance be released at the same time as the NES is gazetted (or soon after).
11. That options for dealing with tyre abandonment be included in the implementation guidance.
12. That the NES expressly allow regional plan rules to be more stringent than the NES.

Appendix 1: Summary of recommendations

Recommendations

1. Place responsibility for monitoring and enforcement of the NES with regional councils.
2. Set the threshold for tyre storage at 100 m³ per site. Tyre storage above this level is subject to resource consent.
3. Exempt new and retread tyres from the threshold for tyre storage.
4. Retain the permitted activity rule in the NES.
5. Reduce the threshold for the permitted activity rule to 20 m³.
6. Refine the permitted activity conditions as follows:
 - a. reducing the threshold from the 40 m³ threshold proposed to 20 m³
 - b. requiring tyre piles to not exceed 3 m in height, with an exemption for tyres that are higher than 3 m when vertical
 - c. requiring outdoor tyre storage above 20 m³ to be located no closer than 50 m from the centre line of power lines and National Grid infrastructure
 - d. requiring outdoor tyre storage quantities greater than 20 m³ to be regulated in relation to their proximity to waterbodies and groundwater
 - e. adding the requirement for outdoor tyre storage greater than 20 m³ to be set back 100 m from the boundary of any port
 - f. removing previously proposed requirement (e) regarding bunding.
7. Confirm the scope of the proposed NES continues to focus on outdoor tyre storage and does not include indoor storage of tyres.
8. Include an exemption in the NES for farm silage tyres stored on or immediately adjacent to areas and pits used regularly for silage production and storage, in quantities no larger than needed to cover the silage in a single layer.
9. Recommend implementation guidance includes advice for councils on how to distinguish between farm silage tyres and other stored tyres.
10. Recommend implementation guidance be released at the same time as the NES is gazetted.
11. Include options for dealing with tyre abandonment in the implementation guidance.
12. Give regional councils the ability to make more stringent rules, in relation to the NES.

Appendix 2: List of submitters

Ashburton District Council
Auckland City Council
Auckland/Waikato Fish & Game
Bay of Plenty Regional Council
Blairs Super Tyre Distributors Ltd
Bridgestone New Zealand Limited
Canterbury Mayors' Forum
Contaminated Land and Waste Special Interest Group
DairyNZ
Douglas Williamson
Environment Canterbury (ECAN)
Federated Farmers
Fletcher Concrete and Infrastructure Ltd – trading as Golden Bay Cement
GMJ Tooling Group Ltd
Goodman Contractors Limited
Hawkes' Bay Regional Council
Heritage New Zealand
Horizons Regional Council
Hurunui District Council
Hutt City Council
Less Waste
Masterton District Council
Matamata District Council
Michael Blumenthal
Motor Trade Association
Nelson-Marlborough District Health Board
Northland Regional Council
New Zealand Tyre Recyclers and Collectors Association (NZTRACA)
OceanaGold
Opotiki District Council
Otago Regional Council
Owen Douglas
Queenstown Lakes District Council
Recycling New Zealand

Rural Contractors New Zealand Incorporated
Swedish Tyre Recycling Association
Taranaki Regional Council
Tararua District Council
Tasman District Council
Te Kotahitanga o Te Atiawa Trust
Te Runanga o Ngāti Whatua
Transpower
Waikato District Health Board
Waikato Regional Council
Waimakariri District Council
Waipa District Council
Waste Management
WasteMINZ Product Stewardship Sector Group
WasteMINZ Contaminated Land Management Sector Group

References

Firecone (2004), *'Management of end-of-life tyres'* prepared for the Ministry for the Environment.

Ministry for the Environment (2014), *'Priority waste streams for product stewardship intervention: A consultation document'*.

Ministry for the Environment (2017), Consultation on a Proposed National Environmental Standard for the Outdoor Storage of Tyres, <https://www.mfe.govt.nz/publications/waste/2017-consultation-proposed-national-environmental-standard-outdoor-storage-of>

Tyre Stewardship Australia (2019), *'Best Practice Guidelines for Tyre Storage and Fire and Emergency Preparedness'*, refer: <https://www.tyrestewardship.org.au/static/uploads/files/15123-tsa-guidelines-for-tyre-storage-report-mar19-wfcdybyfrwwo.pdf>