

**BEFORE INDEPENDENT HEARING PANEL APPOINTED BY THE WELLINGTON
REGIONAL COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991 (**RMA** or
the Act)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on Proposed Plan Change 1 to
the Wellington Natural Resources Plan (**PC1**)

AND

IN THE MATTER OF

Submissions on PC1 by New Zealand Farm
Forestry Association (**NZFFA**)

**EVIDENCE OF JEROME GEOFFREY WYETH ON BEHALF OF NEW ZEALAND FARM
FORESTRY ASSOCIATION**

Dated: 5 May 2025

INTRODUCTION

- 1 My full name is Jerome Geoffrey Wyeth. I am a Technical Director – Planning at SLR Consulting, based in Whangarei.
- 2 I hold the qualification of Bachelor of Science (Geography) and Masters of Science (Geography), with First Class Honours. I am a Full member of the New Zealand Planning Institute.
- 3 I have over 20 years of experience in resource management and planning with roles in central government, local government and the private sector. My primary area of work is policy planning for local and central government, and I am the Policy Portfolio Lead for New Zealand at SLR Consulting. I have worked on a number of district and regional plans at various stages of the Resource Management Act 1991 (**RMA**) Schedule 1 process and have prepared planning evidence for local authority and Environment Court hearings on a range of resource management issues, including freshwater management and plantation forestry.
- 4 Over the last decade, I have been closely involved in the development and implementation of several national direction instruments under the RMA (national policy statements and national environmental standards), from the policy scoping stage through to formal consultation, policy and regulation drafting and finalisation, preparation of section 32 evaluations, and the development of implementation guidance.
- 5 From 2015 to 2018, I worked closely with the Ministry for Primary Industries (**MPI**) and the Ministry for the Environment to develop the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (**NES-PF**). I was initially engaged by MPI to help refine the NES-PF following submissions and was closely involved in policy development and refinement post-consultation, including the drafting of the regulations and progressing the NES-PF through Cabinet processes. I also led the preparation of the report on submissions and recommended amendments to the NES-PF, the section 32 evaluation for the NES-PF, and the preparation of support the implementation of the NES-PF. A key focus of my involvement in the NES-PF was the ability for plan rules to be more stringent than the NES-PF (Regulation 6).

- 6 I subsequently worked with MPI and the Ministry for the Environment during 2022 and 2023 on the amendments to the NES-PF which came into force in 2023 as the Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 (**NES-CF**).
- 7 Although this is not an Environment Court proceeding, I have read the Environment Court's Code of Conduct and agree to comply with it. My qualifications as an expert are set out above. The matters addressed in my evidence are within my area of expertise. However, where I make statements on issues that are not in my area of expertise, I state whose evidence I have relied upon. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in my evidence.

SCOPE OF EVIDENCE

- 8 I have been engaged by the New Zealand Farm Forestry Association (**NZFFA**) to provide planning evidence in relation to their submission on Proposed Plan Change 1 to the Wellington Natural Resources Plan (**PC1**). Specifically, I have been asked to provide planning evidence on whether the more stringent rules for commercial forestry in PC1 meet the relevant statutory tests – being Regulation 6 in the NES-CF and section 32(4) of the RMA.
- 9 Accordingly, my evidence addresses the following:
- (a) Overview of the NES-CF
 - (b) The key statutory tests in Regulation 6 of the NES-CF and section 32(4) of the RMA for a plan rule to be more stringent than the NES-CF
 - (c) A summary of the provisions in PC1 for commercial forestry that are more stringent than NES-CF both as notified in PC1 and as recommended by the reporting officer in the Forestry and Vegetation Clearance Section 42A Report for PC1 (**the section 42A report**)
 - (d) An analysis of whether the more stringent rules in PC1 for commercial forestry are justified in accordance with the relevant statutory tests.
- 10 In addition, my evidence includes:

- (a) A high-level summary of implementation issues for commercial forestry associated with recommended amendments to proposed Rule WH.R20 and Rule P.R19 in the section 42A report
 - (b) A high-level identification of options for addressing the identified issues and achieving the relevant PC1 objectives in a more efficient and effective way.
- 11 In preparing my evidence, I have reviewed section 5.1.5 of the section 32 evaluation report for PC1, the section 42A report referred to above, the evidence of Ms Strang on behalf of NZFFA, and the evidence of Mr Reardon, Mr Pepperell and Mr Blythe on behalf of Greater Wellington Regional Council (**Council**) that is referred to in the section 42A report.

THE NES-CF (PREVIOUSLY NES-PF)

Gazettal and purpose of the NES-PF

- 12 The NES-PF was gazetted on 31 July 2017 and came into force on 1 May 2018. The development of the NES-PF was an extensive process involving significant input from central government agencies, local authorities, forestry representatives and environmental groups over a number of years¹. A key driver for the NES-PF was to address unwarranted variation across regions and districts in the management of plantation forestry under the RMA. This variation was creating significant operational and regulatory uncertainty for the forestry industry and leading to uncertain and inconsistent environmental outcomes².
- 13 Accordingly, the policy objectives of the NES-PF are to:
- a) Maintain or improve the environmental outcomes associated with plantation forestry activities nationally; and*

¹ This includes ongoing involvement from a Stakeholder Working Group which comprised of representatives from regional councils and territorial authorities, the forestry industry, Forest and Bird, and Fish and Game.

² As detailed in the following reports Brown and Pemberton Planning Group (2010) '*Review of 23 district council RMA plan provisions relating to plantation forestry*', Brown and Company Planning Group (2016) '*Review of regional plan provisions relating to forestry, Update of 2010 Report*', Boffa Miskell (2016) '*NES for Plantation Forestry: Evaluation of effectiveness of NES on environmental outcomes*'.

b) *Increase efficiency and certainty in the management of plantation forestry activities.*³

- 14 The NES-PF aims to achieve these objectives through (emphasis added in the NES-PF User-Guide):

*“Providing **nationally consistent provisions** (including specified permitted activity conditions) for the management of plantation forestry activities under the RMA*

*Establishing rules that **permit plantation forestry activities where it is efficient and appropriate to do so**, and where the activities will not have significant adverse effects on the environment*

*Requiring **resource consent for activities where the environmental risk is higher** and more site-specific oversight is needed, or where permitted activity conditions cannot be complied with*

***Allowing plan rules to be more stringent** than the NES-PF to protect locally significant and sensitive environments, and to give effect to certain national instruments.”⁴*

- 15 The hierarchy of the RMA is that national environmental standards (**NES**) sit above regional and district plan rules and prevail unless the NES expressly states otherwise. Accordingly, the starting point for commercial forestry under the RMA is the NES-CF and this takes precedence over regional and district rules except in certain circumstances when the relevant statutory requirements are met. This is fundamental to the NES-PF policy objective of increasing the efficiency and certainty in the management of plantation forestry activities under the RMA.
- 16 The NES-PF was replaced by the NES-CF on 3 November 2023. The primary change in the NES-CF was to extend the regulations to cover exotic continuous-cover forest (i.e. carbon forestry) so that the regulations now apply to “commercial forestry” (i.e. plantation forestry and exotic carbon forestry). The NES-CF amendments also additional regulations and requirements relating to afforestation plans, slash management and a range of technical matters.

³ Refer for example, Ministry for Primary Industries (2017), ‘Proposed National Environmental Standard for Plantation Forestry: Section 32 Evaluation’ (**NES-PF Section 32 Report**).

⁴ Ministry for Primary Industries (2018), ‘Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 - User Guide’, pg. 2 (**NES-PF User Guide**).

Overview of NES-CF regulations and permitted activity conditions

- 17 The NES-CF provides a nationally consistent set of provisions to manage eight core plantation forestry activities that cover the full forestry lifecycle⁵. The NES-CF also manages three ancillary forestry activities⁶, and includes general provisions that apply to all commercial forestry activities.
- 18 The NES-CF includes extensive permitted activity conditions that are targeted and specific to commercial forestry activities. The permitted activity conditions in the NES-CF include (**my emphasis added**):

“Conditions to avoid, remedy, or mitigate adverse environmental effects from plantation forestry activities (e.g. setback requirements, implementation of erosion and sediment control measures).

*Requirements to prepare, and comply with, **management plans** for earthworks, forestry quarrying and harvesting to enable site specific environmental risks to be identified and managed up-front*

*Requirements to **give notice to regional councils and territorial authorities** of the commencement of certain plantation forestry activities (afforestation, earthworks, river crossings, forest quarrying, harvesting) to enable risk-based compliance monitoring to be undertaken where appropriate.*

***Risk assessment tools** that are incorporated by reference into the NES-PF (the Erosion Susceptibility Classification, Wilding Tree Risk Calculator, and Fish Spawning Indicator), which enable location specific assessments of risk to be undertaken in relation to erosion, wilding conifer spread, and fish spawning.”*

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- 19 The NES-CF permitted activity conditions were carefully developed and refined over a number of years to ensure the NES-CF does not permit an activity with significant adverse effects (which would be contrary to section 43A(3) of the RMA). By providing a nationally consistent set of provisions that are targeted to the effects of commercial forestry activities, the NES-CF is intended to create both greater regulatory certainty for commercial forestry while also improving or maintaining environmental outcomes.

THE STATUTORY TESTS FOR MORE STRINGENT RULES UNDER REGULATION 6 OF THE NES-CF AND SECTION 32(4) OF THE RMA

Regulation 6 of the NES-CF

- 20 A plan rule may be more stringent or lenient than NES, but only when the NES expressly allows this (section 43B(1) to (4) of the RMA).

⁵ Afforestation, pruning and thinning, earthworks, river crossings, forestry quarrying, mechanical land preparation, harvesting, replanting.

⁶ Slash traps, indigenous vegetation clearance, vegetation clearance.

⁷ NES-PF User Guide, pg.2.

- 21 The ability for plan rules to be more stringent than the NES-CF was a complex and contentious issue when developing the NES-PF and also through the NES-CF amendments. There are recognised risks either way – providing flexibility for plan rules to be more stringent risks undermining the certainty, efficiency and consistency objectives of the NES-CF. Conversely, providing no flexibility for plan rules to be more stringent means the NPS-CF provisions may conflict with other national direction instrument or not adequately protect sensitive receiving environments. The NES-CF seeks to achieve this balance by requiring good management practices nationally and allowing plan rules to be more stringent to achieve certain outcomes when the particular circumstances of the region or district warrants this.
- 22 Regulation 6 of the NES-CF sets out the circumstances when plan rules **may** be more stringent than the NES-CF. These circumstances broadly relate to giving effect to other national direction instruments⁸, the protection of matters of national importance under section 6(b) and 6(c) of the RMA, and the protection of certain “*unique and sensitive environments*”.
- 23 I led the preparation of the “NES-PF Plan Alignment Guidance” for the Ministry of Primary Industries, which includes specific guidance on where plan rules may be more stringent than the NES-CF under Regulation 6. This guidance is intended to assist with consistent interpretation and implementation of Regulation 6 in the NES-CF stating that it is “*...important to ensure that more stringent rules only prevail over the NES-PF in appropriate circumstances to ensure the underlying policy objectives of the NES-PF to achieve consistency and certainty in the management of plantation forestry activities are not compromised*”.⁹

Section 32(4) of the RMA

- 24 Where local authorities are proposing a new rule that is more stringent than NES (including the NES-CF), there is requirement to demonstrate that the more stringent rule is justified in the context of the particular region or district that it would have effect in accordance with section 32(4) of the RMA. This section of the RMA states:

⁸ The National Policy Statement for Freshwater Management (**NPS-FM**) and New Zealand Coastal Policy Statement (**NZCPS**).

⁹ Ministry for Primary Industries (2018), ‘Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 - Plan Alignment Guidance - May 2018’, prepared for Ministry for Primary Industries by 4Sight Consulting Limited, pg.17.

(4) If the proposal will impose a greater or lesser prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

- 25 The requirement to demonstrate that proposed rules are justified in the context of the particular region or district is an essential statutory test in my opinion. This is because Regulation 6 of the NES-CF does not in itself provide justification for more stringent rules – rather this provides jurisdiction for more stringent rules in certain circumstances when this is appropriately justified.

Demonstrating that more stringent rules are more justified

- 26 In my opinion, there are four key tests that need to be met to demonstrate that a more stringent rule than the NES-CF is justified under Regulation 6 of the NES-CF and section 32 of the RMA as follows:

- (a) **Test 1:** Is there jurisdiction for more stringent rules under Regulation 6 of the NES-CF?
- (b) **Test 2:** Is there sufficient evidence that that commercial forestry activities are not achieving the outcomes sought by Regulation 6? In the context of PC1, this test is that commercial forestry activities are resulting in PC1 freshwater objectives to give effect to the NPS-FM not being met.
- (c) **Test 3:** Is there sufficient evidence that the NES-CF controls are not adequate to achieve the outcomes sought by Regulation 6? In the context of PC1, this test is that the NES-CF is inadequate to achieve the relevant PC1 freshwater objectives.
- (d) **Test 4:** Is there sufficient evidence that the more stringent rules being proposed will be more efficient and effective to achieve the outcomes sought by Regulation 6?

- 27 Overall, I consider that these statutory requirements and good planning practice emphasise the need to exercise stringency over NES in a very considered, transparent and robust manner. This reflects the hierarchy of planning instruments under the RMA and the general purpose of NES to provide national consistency and certainty on resource management issues.

28 I note that my statements above are consistent with the finding of the High Court in *Rayonier New Zealand Ltd v Canterbury Regional Council* [2024] NZHC 1478 where I provided planning evidence on similar issues in relation to Plan Change 7 to the Canterbury Land and Water Plan¹⁰. In that case, the High Court found that the more stringent rules in Plan Change 7 had not been sufficiently justified and the operative rules are now more aligned with the NES-CF.

COMMERCIAL FORESTRY PROVISIONS IN PC1

Overview of commercial forestry provisions notified in PC1

29 The proposed approach for commercial forestry that was notified in PC1 is significantly more stringent than the NES-CF. In summary, the proposed approach for commercial forestry¹¹ notified in PC1 includes the following provisions:

- (a) **Policy WH.P28 and P.P26:** Achieving reductions in sediment discharges from plantation forestry.
- (b) **Rule WH.R20 and Rule P.R19:** Plantation forestry – controlled activity. These rules would require a controlled activity resource consent for a range of plantation forestry activities¹² subject to compliance with conditions relating to not being located on “high erosion risk land” and “highest erosion risk land”, an erosion and sediment management plan, numeric sediment discharge standards, and the relevant Target Attribute State (**TAS**) for visual clarity being in the relevant part Freshwater Management Unit (**FMU**).
- (c) **Rule WH.R21 and Rule P.R20:** Plantation forestry – discretionary activity. These rules would require a discretionary activity resource consent for a range of plantation forestry activities that do not comply with the controlled activity conditions in Rule WH.R20 and Rule P.R19 summarised above.

¹⁰ This case can be found here: [Port-Blakely-Limited-Hearing-D-Legal-submission-reference-Rayonier-New-Zealand-Ltd-v-Canterbury-Regional-Council-2024-NZHC-1478-1.pdf](#)

¹¹ The NES-CF had not been gazetted when PC1 was notified so the provisions generally referred to plantation forestry but it was anticipated this alignment would occur during the Schedule 1 process.

¹² Afforestation, harvesting, earthworks, and mechanical land preparation. The section 42A report also recommended expanding the commercial forestry rules to include vegetation clearance (forestry) and replanting.

- (d) **Rule WH.R22 and Rule P.R21:** Plantation forestry on highest erosion risk land – prohibited activity. This rule would prohibit a range of plantation forestry activities on “highest erosion risk land”.

- 30 In short, the notified rules for plantation forestry in the PC1 would override the NES-CF and either require resource consent or prohibit most plantation forestry activities and introduce new requirements and conditions, including numeric sediment discharge standards.
- 31 The justification for this more stringent management approach for plantation forestry is detailed in section 5.15 of the PC1 section 32 evaluation report “*Plantation forestry and woody vegetation clearance – efficiency and effectiveness of provisions*”. While this evaluation makes it clear that a reduction in sediment in the two Whaitua is necessary to meet certain PC1 objectives, in my view it does not adequately demonstrate that the more stringent rules proposed in PC1 for commercial forestry are necessary to meet those objectives. I consider this further below in relation to the four-step statutory assessment I have outlined above in paragraph 26 of this evidence.

Section 42A report

- 32 The Forestry and Vegetation Clearance Section 42A Hearing Report (**the section 42A report**) provides recommendations on submissions on the commercial forestry¹³ provisions in PC1, including the submissions from NZFFA.
- 33 The reporting officer has recommended a significant change in the proposed management approach for commercial forestry compared to that notified in PC1. Overall, I consider that the amendments to the commercial forestry provisions recommended by the reporting officer are a substantial improvement to those notified in PC1 and also address a number of submission points from NZFFA. In particular, I am generally supportive of the following recommendations in the section 42A report:

¹³ The NES-CF replaced the NES-PF following notification of PC1 which was anticipated by Council. Accordingly, the section 42A report has recommended references to “plantation forestry” are generally replaced with “commercial forestry” and a range of other consequential amendments (new definitions etc.).

- (a) The recommendation to add two new forestry-specific non-regulatory methods (M44A and M44B) and associated amendments to Schedule 27 (Freshwater Action Plans). I understand that the intent of these non-regulatory measures is to require Council to proactively work with forestry sector to identify risks, promote good management practices, and increase the capability of Council to undertake compliance monitoring¹⁴.
- (b) The recommendation to remove the numeric sediment discharge standards from Rule WH.R20 and Rule P.R19. I agree with the reporting officer that such numeric sediment standards are problematic for commercial forestry.
- (c) The recommendation to delete the high erosion risk land and highest erosion risk land maps from PC1 and associated controlled activity conditions in rules WH.R20 and P.R19, discretionary activity rules WH.R21 and Rule P.R20, and prohibited activity Rule WH.R22 and Rule P.R21.
- (d) The recommendation to focus any additional controls for commercial forestry within Whaitua part FMUs where TAS for visual clarity are not being met. At a principle level, I agree that, if there were to be more stringent rules than the NES-CF, then they should only apply where the relevant PC1 freshwater objectives are not being met (subject to the more stringent rules meeting the other relevant tests).

34 While I support these recommendations, some key issues remain with the recommended approach for commercial forestry in the section 42A report in my opinion. This includes the evidence and justification to demonstrate that more stringent rules in PC1 for commercial forestry than the NES-CF are justified in accordance with relevant tests. I also consider that there are some practical and implementation issues and challenges associated with the recommended amendments to Rule WH.R20 and Rule P.R19 and associated management plans requirements¹⁵. I address these issues below.

¹⁴ However, I do consider that the methods can be refined to have less focus on developing "standard consent conditions" and "to ensure effective regulation" for the reasons outlined in this evidence.

¹⁵ Schedule 34A, 34B and 34C in the section 42A report.

WH.R20 AND P.R19 – ASSESSMENT OF STRINGENCY UNDER REGULATION 6 OF THE NES-CF AND SECTION 32(4) OF THE RMA

35 As outlined above, in my opinion, there are four sequential tests that should be met to justify more stringent rules in accordance with Regulation 6 of the NES-CF and section 32 of the RMA. I assess each of these tests below in turn in relation to Rule WH.R20 and Rule P.R19 in the section 42A report.

Test 1: Is there jurisdiction for more stringent rules under Regulation 6 of the NES-CF?

36 In my opinion, yes.

37 Regulation 6(1)(c) of the NES-CF allows more stringent rules if the rule gives effect to an objective developed to give effect to the NPS-FM.

38 The purpose of the proposed Rule WH.R20 and Rule P.R19 is to give effect to the freshwater objectives of PC1. The freshwater objectives in PC1 that the commercial forestry provisions are intended to help achieve are:

(a) Te Awarua-o-Porirua Whaitua; P.O1, P.O2, P.O3 and P.O4.

(b) Te Whanganui-a-Tara Whaitua; WH.O1, WH.O2, WH.O3, WH.O8 and WH.O9¹⁶.

39 The freshwater objectives are broadly about progressively improving water quality and the health of water bodies. The freshwater objectives in PC1 of most relevance to this evidence are those relating to the TAS for suspended fine sediment for rivers (**TAS freshwater objectives**) as these are the basis for the more stringent rules commercial forestry in PC1. Those objectives are WH.09 for Te Whanganui-a-Tara Whaitua (which refers to the TAS Table 8.4) and P.06 for Te Awarua-o-Porirua Whaitua (which refers to the TAS Table 9.2). As these TAS freshwater objectives in PC1 clearly give effect the NPS-FM, in my opinion there is clear jurisdiction in Regulation 6(1)(a) of the NES-CF for more stringent rules for commercial forestry activities.

Test 2: Is there sufficient evidence that commercial forestry activities are resulting the relevant TAS freshwater objectives not being achieved?

40 In my opinion, no.

¹⁶Page 106 of the section 32 evaluation report for PC1.

- 41 TAS are an articulation of freshwater objectives for specific attributes to give effect to the NPS-FM. Accordingly, PC1 includes a number of freshwater objectives that relate to TAS for specific attributes in Appendix 2A of the NPS-FM. The relevant TAS freshwater objectives in PC1 for commercial forestry are outlined above. The section 42A report has recommended that the more stringent rules for commercial forestry in PC1 apply to part FMUs where the TAS for suspended fine sediment are not being met, which is reflected in the recommended amendments to the chapeau of proposed Rule WH.R20 and Rule P.R19.
- 42 My understanding from the evidence of Mr Blyth¹⁷ is that there are five rural catchments (based on SOE monitoring sites) which are not meeting the TAS for suspended fine sediment and that these catchments compromise a total of approximately 95,758 ha (73%) of the two Whaitua (131,956 ha). This indicates that a more stringent approach is being proposed through PC1 for commercial forestry for the majority of the two Whaitua.
- 43 My understanding from the evaluation section 32 report for PC1 is that the more stringent approach for commercial forestry appears to be justified because:
- (a) Forestry is a major land use - 13.5% in the Te Awarua-o-Porirua and 8% in Te Whanganui-a-Tara Whaitua respectively
 - (b) Forestry is generally located on steeper land with higher erosion risk with much of this land at or reaching commercial maturity, meaning an increase in harvesting is expected in the two Whaitua
 - (c) Many forestry activities are known to involve land disturbance that generates sediment discharges to water
 - (d) There is poor compliance with the NES-CF which has resulted in adverse effects by the time this is discovered¹⁸.
- 44 However, there does not appear to be any evidence of contribution of commercial forestry to sediment in the two Whaitua, including its relative contribution relative to other land uses, nor does there appear to be any

¹⁷ Table 3 of Mr Blyth's evidence.

¹⁸ Pages 106 to 108 of the section 32 evaluation report for PC1.

evidence that commercial forestry activities are resulting in TAS for suspended fine sediment (visual clarity) not being met.

45 This appears to be acknowledged by the reporting officer in the section 42A report and the evidence of Mr Greer on behalf of Council. In particular, I note the following comments (**my emphasis added**):

(a) There is general consensus that plantation forestry will deliver significantly less sediment than pastoral farming as a land use activity, but there are noticeable risk periods when plantation forestry can generate sediment, and that plantation forestry generates more sediment than a native forest. On this basis, the evidence of Mr Greer states that *"this supports a position that forestry does contribute to the visual clarity TASs not being met in catchments where it comprises a significant proportion of modified land cover"*¹⁹. The section 42A report relies on this evidence stating that Mr Greer *"confirms from a scientific perspective forestry activities generate sediment and **can be said to be contributing** to visual clarity TAS not being met in pFMU's where improvement is required"*²⁰.

(b) The evidence of Mr Greer acknowledges his understanding that the commercial forestry *"provisions in PC1 are not driven by a scientific argument that they are necessary to achieve the suspended fine sediment TASs in Table 8.4 and 9.2 of PC1"*. Rather, the commercial forestry provisions in PC1 are, at least, partially driven by a policy viewpoint on *"equity"* whereby all sediment generating activities *"should be treated in a similar fashion"*²¹.

46 I appreciate the "equity" argument to some extent in that all sediment generating activities need to play their part to achieve the relevant TAS freshwater objectives. However, in my opinion, this is not sufficient justification to be more stringent than NES and is particularly problematic in the context of the NES-CF which includes a range of specific controls to manage sediment discharges from commercial forestry. This equity argument is also directly at odds with the more lenient approach proposed in PC1 for

¹⁹ Evidence of Mr Greer, paragraph 33.

²⁰ Section 42A report, paragraph 193.

²¹ Evidence of Mr Greer, paragraph 32.

pastoral farming (discussed further below) despite the expert agreement that this land use delivers more sediment.

Test 3: Is there sufficient evidence that NES-CF controls are inadequate for achieving the relevant TAS freshwater objectives?

- 47 In my opinion, no. This is both due to:
- (a) The lack of technical evidence that the NES-CF will not achieve the relevant TAS freshwater objectives.
 - (b) The perceived shortcomings and limitations of the NES-CF and its implementation cited in the section 42A report and supporting evidence.
- 48 Firstly, my understanding is there is no specific evidence that the NES-CF controls are inadequate for achieving the relevant TAS freshwater objectives. This is acknowledged in the evidence of Mr Greer on behalf of Council who states that: 1) the extent to which the notified PC1 provisions will reduce sediment losses has not been considered through the Whaitua or PC1 development processes; and 2) the extent to which the NES-CF will reduce sediment losses has not been considered through the Whaitua or PC1 science processes. On this basis, Mr Greer concludes that "*it is uncertain whether either the PC1 provisions or the NES-CF will contribute to the TAS being met, or that one will achieve demonstrably greater sediment losses than the other*"²².
- 49 This last statement is of significance in my opinion. It clearly illustrates a lack of evidence and certainty that the more stringent consent requirements for commercial forestry proposed in PC1 are necessary to achieve the relevant TAS freshwater objectives, nor that these more stringent rules will be more effective to achieve those objectives.
- 50 In this context, I fully acknowledge that identifying clear links and evidence on the effectiveness of existing and proposed provisions to achieve freshwater objectives can be complex and challenging. However, in my opinion, these links need to be sufficiently clear and certain when proposing more stringent rules that would prevail over NES. This is clearly anticipated by

²² Evidence of Dr Greer, paragraph 35.

the hierarchy of planning instruments under the RMA and section 32(4) of the RMA in my opinion.

51 Secondly, my understanding from the section 42A report and supporting evidence, is that the more stringent rules in PC1 appear to be based on perceived (rather than agreed) shortcomings of the NES-CF and its implementation (including compliance and enforcement processes) rather than any specific evidence that the NES-CF is inadequate.

52 In particular, I note the following comments from the section 42A report (**emphasis added**):

- (a) The NES-CF "*has its limitations*", including that it "*does not include clear and specific thresholds for all activities which have the potential to impact water quality, and some regulations are open to interpretation, which can make compliance and enforcement challenging*"²³.
- (b) The NES-CF does not adequately require best practice and "*good management practice is not always followed*"²⁴.
- (c) There is inadequate compliance and enforcement of the NES-CF and associated management plans, although it is acknowledged that this is practice issue. In particular:

"...with Council acknowledging there are improvements still to be made in how it monitors permitted activities and enforces the NES-CF; this makes it difficult to assess the effectiveness and efficacy of the NES-CF in these Whaitua....
*....while some work has been undertaken to increase monitoring and enforcement of the NES-CF in accordance with the respective WIP recommendations, this has been limited in its application. **It is therefore difficult to get an understanding of whether some of the issues raised by Mr Reardon are because of limitations in the NES-CF or,***

²³ Section 42A report, paragraph 194.

²⁴ Section 42A report, paragraph 194.

rather, are a failure to implement the NES-CF as it was designed”.²⁵

- 53 In my opinion, these statements do not adequately demonstrate that the NES-CF controls are inadequate to achieve the relevant TAS freshwater objectives. Rather, they indicate some perceived shortcomings with the NES-CF regulations and implementation issues which are not sufficient to justify addition regulation and more stringent consent requirements in my opinion.
- 54 The evidence of Ms Strang on behalf of NZFFA provides commentary on the section 42A report, and the evidence of Mr Readon and Mr Pepperell based on her involvement in the NES-CF and practical forestry experience. Key points in that evidence include:
- (a) In her experience, there is no difference in the level of compliance or environmental outcomes between forests that are consented or operating under the NES-CF. Rather, consent requirements generally result in the same environmental outcome but at significantly greater cost and time to local authorities and foresters.
 - (b) The wording in certain NES-CF regulations is deliberate and was carefully developed over a number of years with significant technical and stakeholder input. It also reflects the practical reality of plantation forestry where it is not possible to have “black and white rules” (e.g. during harvesting where safety, environmental and practicable considerations need to be weighed up to get the best solution).
 - (c) The NES-CF notification provisions, management plans and ability to charge for the monitoring of permitted activities all provide local authorities with ample tools to manage compliance. The most effective response to improve environmental outcomes is therefore improve capacity and undertake routine targeted compliance monitoring based on risk.
- 55 These statements are consistent with my experience developing the NES-CF and in my opinion demonstrate that many of the concerns cited in the section 42A report relate to the implementation of the NES-CF (including

²⁵ Section 42A report, paragraph 199.

compliance monitoring) rather than the effectiveness of the regulations themselves.

- 56 In my opinion, it is also not generally appropriate to comment on the "limitations" of NES or that certain regulations in NES are "vague" when preparing plans without sufficient evidence of those "limitations". Regional plans must be prepared in accordance with NES (section 66(1)(f) of the RMA) and the NES-CF is in clearly in force so subjective commentary on the regulations when preparing plans is not particularly helpful in my opinion.

Test 4: Test 4: Is there sufficient evidence that the more stringent rules being proposed will be more efficient and effective to achieve the PC1 freshwater objectives (TAS))?

- 57 In my opinion, no.
- 58 The more stringent Rule WH.R20 and Rule P.R19 in PC1 recommended in the section 42A report appear to be based on an assumption that a requirement for a restricted discretionary activity resource consent for a range of commercial forestry activities will address the perceived shortcomings of the NES-CF and that the resource consent process will lead to improvements in management practices and compliance.
- 59 However, this is overly simplistic in my opinion and may simply lead to the same environmental outcome at a greater economic cost. As detailed in the evidence of Ms Strang on behalf of NZFFA, her experience is that additional regulation and consent requirements do not equate to better environmental outcomes from commercial forestry. Rather the result is "*simply kicking the can down the road and delegating the problem to council consent planners*" to achieve the exact same outcome in the field, but at significantly greater cost and time to both the forester and local authorities²⁶.
- 60 On this basis, I do not agree with the section 32AA evaluation in the section 42A report that proposed more stringent Rule WH.R20 and Rule P.R19 in PC1 are the most efficient or effective way to achieve the relevant PC1 objectives for the following reasons:

²⁶ Evidence of Ms Strang, paragraph 45.

- (a) From a scientific perspective, there is no evidence that the more stringent rules for commercial forestry in PC1 will be more effective to reduce sediment or achieve the relevant TAS freshwater objectives.
- (b) From a forestry perspective, the evidence of Ms Strang is the increased regulation and consent requirements for commercial forestry does not equate to better environmental outcomes, but rather this generally results in the same environmental outcome at a greater economic cost.
- (c) The more stringent Rule WH.R20 and Rule P.R19 in PC1 are expected to be significantly more costly and inefficient compared to the NES-CF regulations. This includes by increasing consent requirements for approximately 75% of the two Whaitua and creating operational uncertainty due to the potential for consent requirements for commercial forestry activities to change during the forestry lifecycle in response to monitoring results.

OTHER IDENTIFIED ISSUES WITH THE SECTION 42A RECOMMENDATIONS TO WH.R20 AND R.19

Applying rules WH.R20 and P.R19 when TAS not being met

- 61 Leaving aside the key issue as to whether more stringent rules than the NES-CF are sufficiently justified, I also consider that proposed Rule WH.R20 and Rule P.R19 presents some implementation challenges for commercial forestry due to the lifecycle of plantation forestry. This means that resource consent requirements may change over the course of a lifecycle in response to a monitored change in the TAS for suspended fine sediment (visual clarity). This could result in harvesting of a plantation forest that was specifically planted for that purpose becoming a restricted discretionary prior to harvest with no certainty that resource consent will be granted. I expect that this regulatory uncertainty could create significant economic implications and investment risks for commercial forestry. The statement of Mr Guttke for NZFFA addresses this in more detail, noting that this uncertainty and potential consenting costs could make commercial forestry uneconomical at a smaller scale.
- 62 I understand that the NPS-FM requires that attribute states for suspended fine sediment (visual clarity) to be based on a monthly monitoring regimes

where sites are visited on a regular basis regardless of weather and flow conditions and that the record length for grading a site should be based on five years²⁷. Monitoring undertaken over a 5-year period would likely help reduce the risk of TAS for suspended fine sediment (and therefore consent requirements for commercial forestry) changing regularly.

- 63 However, this still remains a key regulatory uncertainty and risk in my view which appears to be overlooked in the section 42A report. It is unclear to me exactly how the 5-year record is intended to work in practice (e.g. would consent requirements for commercial forestry be based on a 5-year average or current state) and if all the Whaitua monitoring sites have 5 years of monthly monitoring data on suspended fine sediment (visual clarity).

Consent requirements applying to all commercial forestry activities

- 64 I consider that the proposal to apply a restricted discretionary activity status through Rule WH.R20 and Rule P.R19 to the majority (key) of commercial forestry activities is problematic. For example:
- (a) This would potentially result in a plantation forest established as a permitted activity requiring resource consent as a restricted discretionary activity during the subsequent stages of harvesting and associated earthworks with no certainty that resource consent would be granted.
 - (b) Rule WH.R20 and Rule P.R19 would appear to require restricted discretionary resource consent for earthworks at any stage of the forestry lifecycle regardless of the scale or its proximity to water bodies.
 - (c) A restricted discretionary activity resource consent for afforestation seems overly restrictive in some instances where this may actually reduce sediment discharges, such as when converting from pasture and for permanent carbon forestry (i.e. exotic continuous-cover forest under the NES-CF).
 - (d) I understand that it can be problematic to apply for resource consent for all relevant plantation forestry activities over the forestry lifecycle (i.e. from afforestation/replanting through to harvesting) given the

²⁷ NPS-FM, Appendix 2A – Attributes requiring limits on resource use, Table 8 – Suspended fine sediment.

exact nature of future earthworks and harvesting activities are often not known at the time of afforestation or replanting and may change in response to new technology or practices. There are also practical issues associated with consent duration and lapse periods which appear to be overlooked in the section 42A report. The sum of this could potentially be multiple consent requirements over the forestry lifecycle which I expect could have a significant cumulative economic impact for commercial forestry in the two Whaitua.

- 65 For these reasons, if any consent requirements for commercial forestry over and above the NES-CF are deemed necessary, I consider that further consideration should be given to a more nuanced approach to the activity status of commercial forestry rather than the somewhat blanket approach in proposed Rule WH.R20 and Rule P.R19 for the listed commercial forestry activities.

Section 44A of the RMA

- 66 Section 44A sets out requirements for local authorities to address rules in a plan or proposed plan that duplicate or conflict with a provision in NES. In addition to the more stringent requirements for commercial forestry discussed above, the section 42A report recommends that PC1 duplicates the NES-CF management requirements in Schedule 34A: Afforestation and Replanting Management Plan, Schedule 34B: Forestry Earthworks Management Plan, Schedule 34C: Harvest Management Plan. The only difference in these three scheduled to the NES-CF management plan schedules is to require mapping "*contour lines at intervals less than or equal to 5 metres*"²⁸ (rather than 20m).
- 67 This raises two key issues in my view:
- (a) The proposed management plan requirements in PC1 duplicate the NES-CF which appears contrary to the intent of section 44A of the RMA)
 - (b) Duplicating the management plan requirements from the NES-CF implies that these are achieving the desired outcomes, thereby

²⁸ Clause 2(e) in Schedule 34A and Clause 2(d) in Schedule 34B and 34C.

questioning the need for PC1 to introduce three new management plan schedules for commercial forestry in the first place.

Equity issues with pastoral farming

68 Additionally, in my opinion, there is an equity issue with the way the commercial forestry is proposed to be treated compared to pastoral farming. As outlined above, the generally accepted premise in the technical evidence is that forestry is a better land use than pasture over the long term in terms of sediment discharges to rivers.

69 The PC1 rules (Rule WH.R27 and Rule P.R26) allow for pastoral farming as a permitted activity provided there is a farm environment plan in place that meets the relevant requirements (including an "erosion risk treatment plan" when the farm is on "potential erosion risk land". In my opinion, this presents a fundamental equity issue in that commercial forestry is proposed to be subject to a greater level of scrutiny and regulation compared to pastoral farming (including when located on "potential erosion risk land") despite the latter land use being recognised as contributing greater levels of sediment to rivers.

POTENTIAL OPTIONS TO ADDRESS IDENTIFIED ISSUES

70 As outlined above, the key point in my evidence is that I do not consider the more stringent rules for commercial forestry in PC1 adequately meet the tests in Regulation 6 of the NES-CF and section 32(4) of the RMA.

71 On this basis, the most obvious option is to delete the commercial forestry provisions in PC1 and focus on improving resourcing and capabilities to support the effective implementation of the NES-CF. I note that this is consistent with the recommendations of the respective Whaitua Implementation Programmes and is aligned with new Method M44A and Method 44B recommended by the reporting officer. This option also seems to be broadly aligned with the statement from the reporting officer that commercial forestry can be adequately managed through "*implementation of good management practices and effective monitoring and enforcement of forestry activities and this is the basis of my recommendations in PC1*"²⁹. It also aligned with the evidence of Ms Strang on behalf of NZFFA that the

²⁹ Paragraph 168, section 42A report.

more effective response is for Council to increase engagement with the forestry industry, improve internal capacity, and undertake routine targeted compliance monitoring.

72 However, should the Panel consider that a more stringent approach for commercial forestry is necessary and there is sufficient evidence to support a more stringent approach, then there are alternative options that should be considered further in my opinion.

73 For example, this could involve a more fine-grained approach to apply resource consent requirements and conditions for commercial forestry that are more aligned with the NES-CF and respond to the key areas of concern. For example:

- (a) A permitted activity rule that states the NES-CF management plan requirements apply but with an additional requirement for a finer scale of mapping and risk assessment (e.g. 5m contour scale rather than 20m). As detailed in the evidence of Ms Strang on behalf of NZFAA, I understand this approach has been adopted in Horizons and this appears to be a much more efficient and less duplicative than that proposed through PC1.
- (b) Refining the blanket restricted discretionary consent requirement for the relevant commercial forestry activities. For example, the ability to decline afforestation for plantation forestry may well be justified in some situations and therefore a restricted discretionary activity status may be appropriate, but the same cannot be harvesting. However, it is also important that any resource consent requirements for afforestation or replanting do not act as a disincentive towards a land-use that contributes less sediment than other land uses (e.g. pastoral farming). I also consider that a restricted discretionary activity status for earthworks or vegetation clearance, regardless of scale, is overly onerous. It would be more efficient to rely on the NES-CF permitted activity regulations for these activities or apply a less stringent activity status in my opinion.

CONCLUSION

74 In my opinion, statutory requirements and good planning practice emphasise the need to exercise stringency over NES in a very considered, transparent

and robust manner. This reflects the hierarchy of planning instruments under the RMA and the general purpose of NES to provide national consistency and certainty on resource management issues. Accordingly, this evidence sets out four tests that I consider need to be met to demonstrate that a more stringent rule than the NES-CF is justified under Regulation 6 of the NES-CF and section 32 of the RMA.

- 75 The proposed approach for commercial forestry in PC1 is significantly more stringent than the NES-CF. The reporting officer has recommended a significant change in the proposed management approach for commercial forestry which, in my opinion, is a substantial improvement to that notified.
- 76 However, in my opinion, the more stringent rules for commercial forestry in PC1 do not adequately meet the tests in Regulation 6 of the NES-CF and section 32(4) of the RMA. In particular, I consider that there is insufficient evidence that NES-CF regulations are inadequate to achieve the relevant TAS freshwater objectives in PC1. Rather many of the identified issues appear to relate to the implementation of the NES-CF (including compliance monitoring) and I anticipate that proposed Rule WH.R20 and Rule P.R19 may simply lead to the same environmental outcomes at a greater economic cost to Council and foresters.
- 77 Based on the identified issues, the most obvious option in my opinion is to delete the commercial forestry provisions in PC1 and focus on improving resourcing and capabilities to support the effective implementation of the NES-CF, which is aligned with new Method M44A and Method 44B recommended by the reporting officer. However, should the Panel consider that a more stringent approach for commercial forestry is necessary and that there is sufficient evidence to support this, a more fine-grained and targeted approach is necessary in my opinion.

Jerome Wyeth
5 May 2024