

From: [Meg Buddle](#)
To: [Plan Hearings](#)
Cc: [Chris Fowler](#)
Subject: PC7 Hearing - Evidence in support of Rayonier New Zealand Limited's and Port Blakely Limited's Submission
Date: Friday, 17 July 2020 4:10:16 pm
Attachments: [image001.png](#)
[Final Evidence of Jerome Wyeth.pdf](#)
[Final Evidence of Darren Mann.pdf](#)
[Annexure A to Darren Manns Evidence MPI NESPF Guidance Earthworks Regulations 2235.pdf](#)
[Annexure B to Darren Manns Evidence NZFOA Forest Practice Guide 21 Erosion and Sediment Control Mea.pdf](#)
[Annexure C to Darren Manns Evidence Harvest Plan for Coalgate.pdf](#)
[Annexure D to Darren Manns Evidence Schedule 3 of the NESPF.pdf](#)
[Annexure E to Darren Manns Evidence Slash Mobilisation Risk Assessment.pdf](#)
[Annexure F to Darren Manns Evidence FPG 52Hydroseeding.pdf](#)
[Annexure G to Darren Manns Evidence Inspection Reports of Coalgate and Omihi Forests.pdf](#)

Kia ora

Please find attached evidence in support of Rayonier New Zealand Limited's and Port Blakely Limited's joint submission on Environment Canterbury's Plan Change 7 hearing, which we lodge on the submitters' behalf.

You should receive:

- a. Evidence of Jerome Wyeth;
- b. Evidence of Darren Mann; and
- c. Seven annexures to Darren Mann's evidence (Annexures A – G).

Could you please confirm that you have received all of the documents referred to above?

Kind regards | Nga mihi

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BEFORE THE INDEPENDENT HEARING COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER Of Proposed Plan Change 7 to the Canterbury Land and Water
Regional Plan

BETWEEN **RAYONIER NEW ZEALAND LIMITED AND PORT BLAKELY LIMITED**
Submitter

AND **CANTERBURY REGIONAL COUNCIL**
Local Authority

**EVIDENCE OF JEROME WYETH ON BEHALF OF RAYONIER NEW ZEALAND LIMITED AND
PORT BLAKELY LIMITED**

INTRODUCTION

- 1 My name is Jerome Geoffrey Wyeth.
- 2 I am a Principal Planning and Policy Consultant at 4Sight Consulting where I have been employed since January 2012. I have over 15 years' experience in planning and resource management through various roles in central government, local government and as a planning consultant.
- 3 I hold the qualifications of Bachelor of Science (Geography) and Masters of Science (Geography), First Class Honours. I am a full member of the New Zealand Planning Institute.
- 4 I have been based in Wellington for the majority of my planning career. My primary area of work is policy planning for local and central government clients. I have worked on a number of district and regional plans at various stages of the Resource Management Act 1991 (**RMA**) Schedule 1 process, including preparing planning evidence and appearing at local authority and Environment Court hearings. In recent years, I have been closely involved in the development and implementation of national direction under the RMA (national policy statements and national environmental standards), from the policy scoping stage through to policy 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 and support the implementation of 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, 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, and the section 32 evaluation. I also led the development of guidance to 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 have read the Environment Court's Code of Conduct and agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement of evidence are within my area of expertise.

SCOPE OF EVIDENCE

- 7 My evidence addresses the following matters:
 - (a) Overview of the NES-PF and its sediment management regulations;

- (b) Overview of forestry rules in Proposed Plan Change 7 (**PC7**) to the Canterbury Land and Water Regional Plan (**CLWRP**) and the relationship with corresponding regulations in the NES-PF (where applicable);
- (c) An assessment of the whether there is sufficient justification for more stringent rules than the NES-PF in PC7 and supporting statutory documents; and
- (d) Conclusion.

INTRODUCTION

8 Rayonier New Zealand Limited and Port Blakely Limited lodged a submission on PC7 on 13 September 2019. This submission raised a number of issues with PC7 and in particular with proposed Rules 5.189 and 5.190 that seek to regulate plantation forestry activities (**the PC7 forestry rules**). Rayonier New Zealand Limited and Port Blakely Limited seek a number of amendments to the PC7 forestry rules, as detailed in paragraphs 13, 18, 20, 22, 24, 26 and 27 of their submission.

9 My evidence focuses on the following points in the submission of Rayonier New Zealand Limited and Port Blakely Limited:

- (a) Whether Environment Canterbury (**ECan**) has met the requirement in section 32(4) of the RMA to demonstrate that the more stringent PC7 forestry rules than the NES-PF are necessary and justified in the context of the Canterbury region¹; and
- (b) The standards for the discharge of Total Suspended Solids (**TSS**) in proposed Rule 5.189(3)².

OVERVIEW OF NES-PF AND SEDIMENT MANAGEMENT REGULATIONS

Gazettal and Purpose of NES-PF

10 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 that involved significant input from central government agencies, local authorities, forestry representatives and environmental groups over a number of years³. The policy objective of the NES-PF is to:

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

¹ Paragraph 9(e) of the Rayonier New Zealand Limited and Port Blakely Limited submission.

² Paragraphs 14-18 of the Rayonier New Zealand Limited and Port Blakely Limited submission.

³ 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.

b) Increase efficiency and certainty in the management of plantation forestry activities.⁴

- 11 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 outcomes⁵. The NES-PF aims to address this issue and achieve the policy objective 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".⁶*

- 12 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. The NES-PF therefore takes precedence over regional and district rules with some limited exceptions. 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.

Overview of NES-PF

- 13 The NES-PF provides a nationally consistent set of provisions to manage eight core plantation forestry activities that cover the full forestry lifecycle⁷. The NES-PF also

⁴ Refer for example, Ministry for Primary Industries (2017), 'Proposed National Environmental Standard for Plantation Forestry: Section 32 Evaluation (**NES-PF Section 32 Report**)'.

⁵ Refer, 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'.

⁶ Ministry for Primary Industries (2018), 'Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 - User Guide', pg. 2 (**NES-PF User Guide**).

⁷ Afforestation, pruning and thinning, earthworks, river crossings, forestry quarrying, mechanical land preparation, harvesting, replanting.

manages three ancillary forestry activities⁸, and includes general provisions that apply to all plantation forestry activities. The NES-PF includes comprehensive permitted activity conditions which are more targeted and specific to plantation forestry activities than existing regional and district plan rules. The permitted activity conditions in the NES-PF include (**emphasis added** in the NES-PF User-Guide):

"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.⁹"*

- 14 The NES-PF permitted activity conditions in the NES-PF are deliberately comprehensive and robust to ensure the NES-PF does not permit an activity with significant adverse effects (which would be contrary to section 43A(3) of the RMA). The NES-PF also requires resource consent when the environmental risks of a plantation forestry activity are higher, such as where earthworks or forestry quarrying are undertaken in the red zone in the Erosion Susceptibility Classification¹⁰.
- 15 By providing a nationally consistent set of provisions that are specifically targeted to the environmental effects of different plantation forestry activities, the NES-PF creates both greater certainty for the plantation forestry sector while also 'raising the bar' (or at least maintaining it) in terms of environmental outcomes.

Overview of Sediment Management Regulations in the NES-PF

- 16 Provisions to manage sediment discharges and run-off from have been included throughout the NES-PF as a number of plantation forestry activities have the potential to generate sediment runoff, with potential adverse effects on receiving

⁸ Slash traps, indigenous vegetation clearance, vegetation clearance.

⁹ NES-PF User Guide, pg.2.

¹⁰ Regulation 35(2)(b) and 61(4)(a).

waterbodies. As such, there is no one single regulation or specific section of the NES-PF that manages sediment discharges. Rather the NES-PF includes a range of regulations relating to sediment management that are primarily focused on those plantation forestry activities with the greatest potential for sediment discharges (earthworks, forestry quarrying, harvesting).

17 There are several types of requirements and controls in the NES-PF that have been designed to effectively prevent and manage sediment discharges from plantation forestry activities. Collectively, these regulations focus on controlling and containing sediment runoff at source and ensuring appropriate setbacks to sensitive receiving environments. The key NES-PF regulations relating to sediment management are summarised below under the following headings:

- (a) Setbacks;
- (b) Management plans;
- (c) Erosion and sediment controls; and
- (d) Water quality mixing standards.

Setbacks

18 The NES-PF includes a range of regional setbacks from waterbodies that apply to afforestation, earthworks, forestry quarrying, harvesting, mechanical land preparation and replanting¹¹. Setbacks are a common method applied throughout New Zealand to manage the potential adverse effects of sediment run-off from land disturbance activities on receiving waterbodies by providing a buffer between the area of disturbance and the receiving environment. The function and environmental benefits of the setbacks in the NES-PF are articulated in the NES-PF section 32 report as follows:

The NPSPF includes a range of setbacks for forestry activities. The purpose of the setback provisions is to create riparian buffers within plantation forests which can provide benefits to aquatic and terrestrial ecosystems and water quality throughout the forestry life-cycle...

The principle of controlling erosion at the source is integral to the rules and risk management framework of the NES-PF. Wherever possible soil erosion and sedimentation from earthworks should be controlled at source to minimise the amount of suspended sediment in concentrated flows that could directly enter waterways. However, riparian buffers may reduce sediment generation within the riparian zone (bank erosion) or act as a filter of runoff reducing sediment yield. Further, setbacks can reduce ground disturbance in the riparian zone, including reducing stream bank erosion...

¹¹ Regulations 14, 29, 54, 68(4) and (5), 74(8), 78.

*...In summary, the setback provisions in the NES-PF provide an important function for maintaining water quality, biodiversity corridors, buffering effects, and providing habitat for freshwater aquatic ecosystems within forested areas*¹²

19 The size of setbacks from waterbodies varies in the NES-PF depending on the type of water body and the plantation forestry activity. For example, the regional council setbacks for afforestation under Regulation 14(3) are as follows:

(a) within 5 m of—

*(i) a perennial river with a bankfull channel width of less than 3 m;
or*

(ii) a wetland larger than 0.25 ha; or

(b) within 10 m of—

*(i) a perennial river with a bankfull channel width of 3 m or more;
or*

(ii) a lake larger than 0.25 ha; or

(iii) an outstanding freshwater body; or

(iv) a water body subject to a water conservation order; or

(v) a significant natural area; or

(c) within 30 m of the coastal marine area.

20 Comparatively, the setbacks for earthworks activities to certain waterbodies are more restrictive, but also contain some exemptions for small scale earthworks or necessary activities such as constructing or maintaining a river crossing or sediment control measures¹³. The setbacks for forestry quarrying to waterbodies are also more restrictive than those for earthworks¹⁴. In this way, the NES-PF setback requirements are targeted to the nature of each plantation forestry activity and the risks of sediment discharges posed by that activity to different types of waterbodies.

Management plans

21 Management plans are a critical component of sediment management under the NES-PF and are recognised as good practice within the forestry industry. The NES-PF requires site specific management plans to be prepared for the three plantation forestry activities that have the greatest potential to generate sediment discharges

¹²NES-PF Section 32 Report, pg. 47.

¹³ Regulation 29.

¹⁴ Regulation 54(3).

– earthworks, forestry quarrying and harvesting¹⁵. Schedule 3 and 4 of the NES-PF sets out specific requirements for the content of these management plans to ensure forestry operators proactively identify and manage activity and site-specific erosion and sediment generation risks (among other areas of environment risk). The management plan requirements in the NPS-PF also place an emphasis on managing erosion at source through good management practices.

22 Specific requirements in the NES-PF for the preparation and content management plans of most relevance to sediment management include:

- (a) A requirement to identify the location of all waterbodies and other downstream risks;
- (b) All required setbacks;
- (c) Management practices that will be used avoid, remedy and mitigate environment risks; and
- (d) Details on proposed sediment and control measures and how they will be used, in sufficient detail to enable site audits of management practices to be carried out.

23 For example, forestry earthworks management plans are required to (**emphasis added**)¹⁶:

- a) identify the area to which the plan applies:*
- b) describe the scope of work covered by the earthworks and whether it is for maintenance, upgrade, road widening, realignment, or new works:*
- c) indicate the anticipated construction time for forestry earthworks and stabilisation:*
- d) describe clearly the management practices that will be used to avoid, remedy, or mitigate risks due to forestry earthworks that have been identified on the map, including the proposed erosion and sediment control measures to be used and the situations in which they will be used, in sufficient detail to enable site audit of the management practices to be carried out:*
- e) include the following for earthworks management:*
 - i. water run-off control measures:*
 - ii. sediment control measures during construction and during harvest:*

¹⁵ Regulations 27, 59 and 66. The NES-PF also requires a combined harvest and earthworks management plan when harvesting is undertaken in the orange or red zone in the Erosion Susceptibility Classification (Regulation 66(3)).

¹⁶ Clause 4 of Schedule 3.

- iii. *the method used to manage excess fill for large-scale cut and fill operations, and if end haul, the proposed disposal location:*
- iv. *methods used to stabilise batters, side cast, and cut and fill:*
- v. *post-harvest remedial work (timing and methods).*

- 24 Foresters are required to undertake earthworks, forestry quarrying and harvesting in accordance with the management plan¹⁷.
- 25 To add an additional layer of accountability, management plans must be provided to the relevant council on written request (following written notice of the activity) and/or the council may request that the management plan be provided annually. Material amendments to management plans must be documented and dated, and the relevant council must be advised that a material amendment has been made. The amended plan must be made available to the relevant council on request. This accountability to regional councils, plus the specific direction in the NES-PF that activities must be carried out in accordance with management plans, helps to ensure these are an effective tool in identifying and managing site-specific environmental risks with sediment management being a key focus.
- 26 While some foresters were utilising management plans prior to the NES-PF, the NES-PF management plan requirements are generally more extensive than what existed and are expected to 'lift the bar' nationally. From my involvement in the the NES-PF, I understand this was accepted by forestry representatives in return for the certainty and consistency benefits provided by a NES.

Sediment, stormwater and water runoff controls

- 27 The NES-PF includes specific requirements for sediment, stormwater and water runoff controls¹⁸ to be installed and maintained for earthworks (Regulation 31) and forestry quarrying (Regulation 56) as the two plantation forestry activities with the greatest potential to generate and discharge sediment. These controls are intended to avoid or mitigate adverse environmental effects and meet other performance based permitted activity conditions in the NES-PF, such as those relating to the effects of sediment discharges in receiving waters (discussed further below). There are also other requirements in the NES-PF that require sediment discharges to be managed, such as requirements to stabilise earthworks within 20 days of completion, to stabilise and contain disturbed soil to minimise sediment entering

¹⁷ Regulations 27(6), 59(7), 66(7).

¹⁸ Sediment control measures, stormwater control measures and/or water run-off control measures are defined in Regulates 3.

water, and to stabilise exposed areas of soil as soon as practicable following earthworks¹⁹.

- 28 The requirements to install and maintain sediment control measures in the NES-PF are supported by guidance in the NES-PF User Guide²⁰ that lists examples of sediment, storm water and water run-off control measures that foresters can use to comply with these conditions. The list in the NES-PF User Guide is not exhaustive, but it includes measures such as silt fences, sediment traps, soak holes, sediment retention ponds and water table drains, including guidance on scenarios where these measures should and shouldn't be used.
- 29 It is up to foresters to determine the most appropriate management practices and runoff controls to manage sediment on their site. However, the NES-PF requires these sediment control measures to be recorded in the earthworks and forestry quarry management plans at sufficient detail that enables site audits of these practices to be undertaken. This, in turn, assists regional councils with their compliance monitoring functions and provides added assurance that appropriate methods will be used to manage sediment runoff.

Water quality standards

- 30 The NES-PF incorporates water quality standards as permitted activity conditions for earthworks, forestry quarrying, harvesting, mechanical land preparation and slash traps (**NES-PF water quality standards**)²¹. The NES-PF water quality standards are consistent with the water quality standards in section 70(1) of the RMA²² which set limits on permitted activity rules relating to discharges of contaminants into water, or onto land where that contaminant may enter water. The NES-PF water quality standards state that sediment must be managed to ensure that, after reasonable mixing, it does not give rise to the following effects in receiving waters:
- (a) *any conspicuous change in colour or visual clarity;*
 - (b) *the rendering of fresh water unsuitable for consumption by farm animals;*
and
 - (c) *significant adverse effects on aquatic life.*
- 31 The NES-PF water quality standards are qualitative and there are no numeric standards within the NES-PF to assist with interpreting these standards. The

¹⁹ Regulations 28(1), 31(1) and 32.

²⁰ NES-PF - User Guide, section 4.8. The New Zealand Forest Owners Association has also developed 28 specific forestry practice guides with a focus on erosion and sediment control that can be used to comply with these regulations.

²¹ Regulations 26, 56, 65, 74(6) and 90.

²² The NES-PF water quality standards differ from section 70 of the RMA in that they omit two tests that are not applicable to forestry activities: the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials and any emission of objectionable odour.

reasons that numeric water quality standards were not included in the NES-PF at that point of time are detailed in the NES-PF section 32 report:

- *Insufficient information is currently available at a national level to set evidence-based standards that could accurately apply to all streams and rivers in New Zealand. Sediment is being considered as an attribute within the National Objective Framework (NOF) but there is still significant research that needs to be undertaken as this is a complex issue and there are a range of factors that need to be considered to understand the effects of different sediment discharges on different receiving environments.*
- *Numeric water quality standards or parameters in the NES-PF may potentially be seen as the permitted baseline for all discharges to water. Given this potential uncertainty, there is a need to have robust science to justify any numeric parameters and/or set these at an overly conservative level which is unlikely to be appropriate in all regions.*
- *Regional councils have often given further definition and clarity to the water quality standards in section 70 of the RMA through their plans or internal guidelines. In the absence of numeric parameters in the NES-PF, it is assumed that regional councils will continue to use their guidelines and plans to give more clarity to the water quality standards relating to conspicuous changes in water clarity and reasonable mixing zones within their regions.*
- *'Reasonable mixing' has often been defined with reference to the site specific factors that need to be considered (e.g. width of the river, within 24 hours). While this may be achievable at a regional scale for point source discharges, it is not possible to define a meaningful mixing zone for diffuse discharges, or one that would be applicable to all rivers and other water bodies in New Zealand, without potentially causing significant adverse effects²³.*

32 The assumption therefore when the NES-PF was developed was that regional councils would continue to use their own definitions and guidelines (e.g. visual clarity and reasonable mixing) to interpret the NES-PF water quality standards. I note that central government has recently developed water quality attributes for sediment through the new National Policy Statement for Freshwater Management (NPS-FM)²⁴.

²³ NES-PF section 32 report, section 6.3.3.

²⁴ A new NPS-FM 2020 is expected to come into force later this year. The Ministry for the Environment has provided information sheets on the attributes in the new NPS-FM which provides an overview of the attributes for fine suspended sediment and fine deposited sediment.

Section 32 evaluation of NES-PF provisions relating to sediment and water quality

- 33 The NES-PF section 32 report provides an evaluation of the effectiveness and efficiency of the sediment management regulations in the NES-PF to achieve the NES-PF objective to maintain or improve environmental outcomes. In relation to the effects of plantation forestry activities on water quality, this assessment identified the following environmental benefits of the NES-PF (compared to status quo) which will be variable across New Zealand:

Setbacks: *Nationally consistent riparian setbacks from waterbodies are a proven as an effective method to mitigate adverse effects on freshwater and also help to reduce sediment generation in this riparian zone. Setbacks are a relatively common, well understood mechanism that provide long term environmental benefits to freshwater quality.*

Erosion and sediment controls combined with management plans: *The NES-PF applies best practice erosion and sediment controls (permitted activity conditions underpinned by management plan requirements) uniformly across New Zealand with a focus on sediment retention at source. This will improve performance and reduce adverse effects where current practice is lower.*

Water quality mixing standards: *The water quality mixing standards for sediment discharges in the NES-PF provide clear direction on the adverse effects in receiving waterbodies that must be avoided. These are based on the standards in the RMA with the expectation that regional councils will apply more specificity to these standards using their existing practices and guidelines. This will help to maintain or improve water quality.²⁵*

- 34 The overall assessment of the effectiveness of the NES-PF provisions to maintain and improve environment outcomes from the management of plantation forestry activities is summarised in the NES section 32 report as follows:

...this evaluation found that the NES-PF provisions will be 'effective' to maintain or improve environmental outcomes and increase certainty in the management of forestry activities under the RMA. In particular:

The NES-PF provisions are targeted to the effects and risks associated with forestry activities and are designed to achieve consistent, more certain environmental outcomes through the consistent application of established best practice forestry management practices. A key focus of the NES-PF is managing sediment and erosion at source and using a risk based approach and management plans to proactively identify and manage activity and site-specific risks. Foresters and councils will benefit from the

²⁵ NES-PF section 32 report, Table 17, pg. 49

use of risk management tools and improved centralised information on environmental risks to better inform decision-making. In particular, the Erosion Susceptibility Classification (ESC) which provides a tool to assess erosion risk and apply consent requirements on high risk land²⁶.

Regulation 6 of the NES-PF – where plan rules may be more stringent

- 35 The general hierarchy of the RMA is that NES prevail over rules in regional and district plans and that plan rules should not duplicate or conflict with provisions in a NES²⁷. However, a NES may expressly state that a plan rule may be more stringent or lenient and prevail over the standard²⁸.
- 36 The ability for plan rules to be more stringent than the NES-PF was a complex and contentious issue when developing the NES-PF and remains so. 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-PF. Conversely, providing no flexibility for plan rules to be more stringent means the NPS-PF provisions may not adequately protect locally significant and/or sensitive receiving environments in all circumstances. The NES-PF seeks to achieve the right balance by encouraging best management practice nationally and allowing some discretion for more stringent approaches where site-specific factors warrant this. The extent to which councils have applied more stringent rules is a specific matter being assessed through the one-year-review of the NES-PF²⁹.
- 37 Regulation 6 of the NES-PF sets out the circumstances when plan rules may be more stringent than the NES-PF. These circumstances broadly relate to giving effect to other national direction instruments (the NPS-FM and New Zealand Coastal Policy Statement 2010 (**NZCPS**)), the protection of certain matters under section 6(b) and 6(c) of the RMA, and the protection of ‘unique and sensitive environments’. Of particular relevance to PC7 is Regulation 6(1)(a), which states:
- (1) A rule in a plan may be more stringent than these regulations if the rule gives effect to—*
- (a) an objective developed to give effect to the National Policy Statement for Freshwater Management:*
- 38 The intent of Regulation 6(1)(a) is to ensure that the NES-PF does not conflict with NPS-FM and to recognise that there may be specific circumstances where more stringent controls than the NES-PF may be warranted to achieve freshwater objectives (e.g. sensitive catchments or degraded catchments where substantial

²⁶ Ibid, pg. 2.

²⁷ Section 44A(1)-(5) of the RMA.

²⁸ Section 44B(1)-(4) of the RMA.

²⁹ Refer, Te Uru Rākau (2019), ‘Terms of Reference for Year One Review of NES-PF’: <https://www.teururakau.govt.nz/dmsdocument/32878/direct>

improvements are needed to meet freshwater objectives). However, this was also identified as a particularly risky and debatable area when developing the NES-PF. The wording of Regulation 6(1)(a) is therefore intended to ensure there is a clear link between: 1) the more stringent rule; 2) the plan objective(s) the rule gives effect to/implements; and 3) how that plan objective(s) gives effect to the NPS-FM.

39 Where councils are proposing a new rule that is more stringent than the NES-PF, or 'rolling over' an existing more stringent rule, there is a requirement to demonstrate that the more stringent rule is justified in the context of the particular region/district in accordance with section 32(4) of the RMA. This section of the RMA states:

(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.

40 MPI published the NES-PF Plan Alignment Guidance, which includes specific guidance on where plan rules may be more stringent than the NES-PF under Regulation 6³⁰. This guidance is intended to assist with consistent interpretation and to help minimise implementation inconsistency and risk stating "It is also 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"³¹.

41 This guidance further explains the intent of Regulation 6(1)(a) as follows:

The provisions in the NES-PF are generally expected to be sufficient to give effect to the NPSFM. The NES-PF includes a range of provisions to manage sediment (e.g. minimum setbacks to waterbodies, requirements to install sediment control measures, management plan requirements) to maintain or improve water quality – a key objective in the NPSFM. The NES-PF also includes water quality parameters for sediment discharges in receiving waterbodies which are consistent with section 70 of the RMA, and requirements to manage slash to avoid adverse effects on receiving waterbodies.

However, under certain circumstances councils and their communities may go through the process of giving effect to the NPSFM and determine that

³⁰ 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.

³¹ Ibid. Pg.17.

more stringent rules are required to achieve an objective in their region relating to freshwater that gives effect to the NPSFM. This is most likely to relate to Objective A1 or Objective A2 of the NPSFM³².

42 In terms of providing the evidence and justification necessary for a plan rule to be more stringent than the NES-PF, this guidance states that councils must demonstrate:

- 1. How a more stringent rule that applies to plantation forestry activities gives effect to (implements) a particular objective in the plan; and*
- 2. How that particular objective in the plan gives effect to the NPSFM.*

It is important that councils make this link clear to:

- 1. Demonstrate that the rule meets the requirements of Regulation 6(1)(a); and*
- 2. Provide certainty to plan users and implementers³³.*

43 As noted above, section 32(4) of the RMA also requires councils to demonstrate that proposed rules (including rules being rolled over as part of a plan review) are justified in the context of the particular region/district. This is important as the circumstances provided for in Regulation 6 are not in of themselves justification for more stringent rules – they simply allow more stringent rules in certain circumstances when site-specific factors warrant this. In my opinion, the starting point when assessing the need for a more stringent rule under Regulation 6(1)(a) is firstly to demonstrate the NES-PF controls are not sufficient to achieve a plan objective that gives effect to the NPS-FM. The next step is to then demonstrate how a more stringent rule will achieve that objective in a more effective and efficient way than the NES-PF and that the more stringent rule is justified in the context of the particular region. Simply proving a link between a proposed rule and a plan objective that gives effect to the NPS-FM is not sufficient in my opinion.

44 Overall, statutory requirements and good planning practice both emphasise the need to exercise stringency over a 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 significant resource management issues.

³² Ibid, Pg. 19.

³³ Ibid, Pg 20.

OVERVIEW OF PC7 FORESTRY RULES

Overview of PC7 forestry rules

- 45 Environment Canterbury (**ECan**) notified PC7 to the CLWRP in July 2019. PC7 does not propose any amendments to the CLWRP objectives but rather proposes amendments to the policies and rules to better achieve the objectives.
- 46 Part A of PC7 is an 'Omnibus Plan Change' and makes amendments to the CLWRP region-wide provisions and sub-region sections 11, 13 and 15. The purpose of the Omnibus Plan Change as described in the PC7 section 32 report is to:
- "ensure the CLWRP responds appropriately to new directives from central government, emerging environmental issues, and changes in matters that are strategic priorities for Environment Canterbury. Part A of PC7 introduces region-wide responses to a range of issues that have emerged, particularly arising from amendments to the NPSFM, the introduction of the NESPF and provisions for managing a number of discrete activities or topics"*³⁴.
- 47 To address the introduction of the NES-PF and clarify the relationship with the CLWRP, PC7 proposes to:
- (a) Introduce two new rules specifically related to plantation forestry – proposed Rule 5.189 and Rule 5.190 (the **PC7 forestry rules**);
 - (b) Delete existing rules 5.72, 5.73, 5.74 in the CLWRP (which all relate to Flow Sensitive Catchments)³⁵; and
 - (c) Amend the definition of plantation forestry.
- 48 ECan's stated rationale for these provisions is *"To address uncertainty around which provisions apply to plantation forestry activities, and to ensure that the freshwater objectives contained in the CLWRP continue to be met..."*³⁶.
- 49 The two proposed PC7 forestry rules notified by ECan are as follows:

Rule 5.189

Any plantation forestry activity regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations including:

- a. the use, excavation, deposition or disturbance of land, including in the bed of a lake or river, or in a wetland; or*

³⁴ Environment Canterbury (2019), 'Section 32 Evaluation Report for Plan Change 7 (Omnibus, Orari-Temuka-Opihi-Pareora and Waimakariri) to the Canterbury Land and Water Regional Plan and Plan Change 2 to the Waimakariri River Regional Plan', pg.8,

³⁵ Although I note that the PC7 section 42A report recommends that these rules be re-introduced to ensure these apply to permanent/carbon sink forests, pg.76.

³⁶ PC7 section 32 report, pg.9.

- b. the planting, replanting or clearance of vegetation, including in the bed of a lake or river, or in a wetland; or*
- c. the taking or diverting of water; or*
- d. the discharge of contaminants into water or onto or into land in circumstances where it may enter water;*

is a permitted activity, provided the following conditions are met:

- 1. Planting of new areas does not occur within any Flow Sensitive Catchment listed in Sections 6 to 15 of this Plan; and*
- 2. Within any Flow Sensitive Catchment listed in Sections 6 to 15 of this Plan:*
 - a. the total area replanted does not exceed the area of harvest; and*
 - b. the replanting occurs in the same location or within the same area used as part of the rotation of the forestry operation as at 1 November 2010; and*
 - c. any replanting occurs within five years of the removal of the previous forest cover; and*
- 3. The concentration of total suspended solids in the discharge does not exceed:*
 - a. 50g/m³ where the discharge is to any Spring-fed river, Banks Peninsula River, or to a lake, except when the background total suspended solids in the waterbody is greater than 50g/m³ in which case the Schedule 5 visual clarity standards shall apply; or*
 - b. 100g/m³ where the discharge is to any other river or to an artificial watercourse except when the background total suspended solids in the waterbody is greater than 100g/m³ in which case the Schedule 5 visual clarity standards shall apply;*
- 4. The activity is not undertaken in any Indigenous Freshwater Species Habitat; and*
- 5. The activity is not undertaken in any inanga spawning habitat during the inanga spawning season of 1 March to 1 June inclusive; and*
- 6. The activity does not reduce the area of a wetland; and*
- 7. Any portable container used to store a hazardous substance (including fuel) is not located within:*
 - a. 20 m of a surface water body or a bore; or*
 - b. a Community Drinking-water Protection Zone as set out in Schedule 1.*

Rule 5.190

Any plantation forestry activity regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations including:

- a. the use, excavation, deposition or disturbance of land, including in the bed of a lake or river, or in a wetland; or*
- b. the planting, replanting or clearance of vegetation, including in the bed of a lake or river, or in a wetland; or*
- c. the taking or diverting of water; or*
- d. the discharge of water or contaminants into or onto land in circumstances where it may enter water;*

that does not meet one or more of the conditions in Rule 5.189 is a discretionary activity.

Relationship between PC7 forestry rules and NES-PF

50 In my opinion, the relationship between the PC7 forestry rules and the NES-PF is unclear requires further clarification. In particular, the advice note preceding the proposed Rule 5.189 and 5.190 does not provide sufficient clarity on this relationship and which provision prevails in the event of conflict. Advice Note 1 states:

"Plantation forestry activities, as defined in Section 2 of this Plan, are regulated by Rules 5.189 to 5.190 and must also comply with the National Environmental Standards for Plantation Forestry (NESPF)".

51 Effectively, this can be interpreted as meaning plantation forestry activities must comply with both the PC7 forestry rules and the NES-PF. However, PC7 does not explain to plan users whether the PC7 forestry rules are intended to prevail over the NES-PF regulations where there is conflict (presumably because they are more stringent). PC7 also provides no guidance to a plan user as to which NES-PF standards are being overridden, so there is potential for confusion as to which NES-PF standards still apply. For example, it is unclear whether the sediment discharge standards in proposed Rule 5.189(3) apply **in addition to** the NES-PF water quality standards (and other sediment management regulations) or instead of those standards (because the PC7 sediment standards are potentially more stringent).

52 My understanding from reading the PC7 section 32 report is that ECan consider that all standards in proposed Rule 5.189 are more stringent than the NES-PF (or address effects not dealt with in the NES-PF) and are therefore intended to prevail over the NES-PF in the event of conflict³⁷. However, this is not clear from reading

³⁷ Ibid, pg. 60.

the PC7 forestry rules at face value and it is also unclear what NES-PF regulations that the PC7 forestry rules are intended to prevail over. This uncertainty is a potential cost and should be addressed in my opinion.

- 53 The approach recommended in the NES-PF Plan Alignment Guidance is for councils to make it clear to plan users where a more stringent plan rule prevails over the NES-PF and what regulations in the NES-PF then more stringent rule prevails over³⁸. In my opinion, this is good planning practice as it is important for plan users to be able to understand what rules their activities are subject to.

Comparison of PC7 forestry rules against corresponding NES-PF regulations

- 54 The PC7 section 32 report makes a general statement that the CLWRP provisions are more stringent than the NES-PF in relation to the management of suspended sediment, wetland disturbance, fuel storage and refuelling, inanga spawning habitat, and afforestation and replanting in flow sensitive catchments³⁹. These more stringent standards in the CLWRP seem to be the basis for the proposed PC7 forestry rules. However, there is no comparative analysis of the standards in proposed Rule 5.189 and the corresponding NES-PF regulations to demonstrate if, and how, these provisions are more stringent than the NES-PF. Most importantly in my opinion, there is also no evidence within the PC7 section 32 report to demonstrate that more stringent standards in proposed Rule 5.189 are justified in the context of the Canterbury region and required to meet plan objectives (and that the NES-PF is not sufficient in this respect).
- 55 Accordingly, I provide a high-level assessment of the standards in proposed Rule 5.189 against the corresponding regulations in the NES-PF (where applicable). This assessment focuses on the sediment discharge standard in proposed Rule 5.189(3) as this presents some practical and compliance issues for forestry operators in the region (as detailed in the evidence of Mr Mann). However, I also briefly address the other standards in proposed Rule 5.189 for completeness.

Standard 3 – Suspended Solids

- 56 Proposed Rule 5.189(3) includes Total Suspended Solids (**TSS**) discharge standards and imposes different requirements depending on background TSS concentrations – either a numeric TSS discharge standard or a visual clarity standard. Proposed Rule 5.189(3) requires that discharges of sediment from plantation forestry activities:
- (a) Have a TSS concentration of no higher than 50g/m³ (Spring-fed river, Banks Peninsular River, or lake) or 100g/m³ (any other river or artificial watercourse)⁴⁰; or

³⁸NES-PF - Plan-Alignment Guidance' pg. 18.

³⁹ PC7 section 32 report, pg. 52.

⁴⁰ I understand these TSS discharge limits are consistent with existing Rule 5.99(4) and 5.170(4) in CLWRP.

(b) Where the background concentrations of TSS are higher than the above standards, comply with Schedule 5 of the CLWRP Schedule 5 (Mixing Zones and Receiving Water Standards) ⁴¹.

- 57 The corresponding NES-PF regulations that relate to sediment management are discussed above in paragraph 16 to 34. Overall, it is difficult to make an absolute assessment of whether proposed Rule 5.189(3) is more stringent than the NES-PF given the range of NES-PF regulations relating to sediment management. The relative 'stringency' of the TSS discharge limits in Proposed Rule 5.189(3) will also vary with the size of the waterbody (e.g. a TSS discharge of 50g/m³ into a small waterbody could result in a significant change in visual clarity compared to a large waterbody).
- 58 The key difference in my opinion is that the numeric TSS discharge limits of 50g/m³ and 100g/m³ in Proposed Rule 5.189(3) impose an absolute, region wide approach whereas the sediment management regulations in the NES-PF are based on a more pragmatic and fine grained management approach, with additional controls applies where risks are greater (e.g. through a resource consent requirement for earthworks undertaken in red zone land in the Erosion Susceptibility Classification).
- 59 As detailed in the evidence of Mr Mann, the blanket region-wide TSS discharge standards in proposed Rule 5.189(3) present a number of practical and compliance issues for forestry operators in the Canterbury region. Due to the lack of guidance as to where, when and how the TSS standard will be measured Mr Mann is unclear whether Rayonier Matariki Forests can comply with the TSS discharge standard at all times. Compliance may not be achievable in some circumstances (e.g. high rainfall events) even where good management practices are applied. In my opinion, this places greater importance on the need for clear evidence to demonstrate why this more stringent standard is needed in the context of the Canterbury region.
- 60 Conversely, the requirement to comply with the visual clarity standard in Schedule 5 of the CLWRP is consistent with that anticipated under the NES-PF water quality standards, i.e. that regional councils will use their own standards and guidelines relating to mixing zones and visual clarity to interpret and apply the NES-PF water quality standards⁴².

Other Standards in Proposed Rule 5.189

- 61 In terms of the other standards in proposed Rule 5.189:

⁴¹ Schedule 5 of the CLWRP is not changed by PC7. The 'receiving water standards' require that the change in visual clarity shall not exceed 20-35% (depending on the waterbody). For point source discharges, these water quality standards do not need to be met within the 'Mixing Zone' which is defined in Schedule 5 and essentially allows for reasonable mixing within certain distances.

⁴² As noted in section 4.9 of the NES-PF User Guide.

- (a) **Standard 1 and 2⁴³:** The effects of plantation forestry on water yield are not addressed in the terms and conditions in the NES-PF⁴⁴ and therefore plan rules can address such effects in accordance with section 43A(5)(c) of the RMA. Proposed Rule 5.189(1) and (2) meet this requirement in opinion. I also understand that Rayonier New Zealand Limited and Port Blakely Limited no longer have any concerns with these standards.
- (b) **Standard 4:** Proposed Rule 5.189(4) is more stringent than the NES-PF as it will require a discretionary activity resource consent for any plantation forestry activity within a 'Indigenous Freshwater Species Habitat' area.
- (c) **Standard 5:** Proposed Rule 5.189(5) is more stringent than the NES-PF as it will require a discretionary activity resource consent for any plantation forestry activity undertaken within an Inanga Spawning Habitat during the spawning season (1 March to 1 June)⁴⁵. I understand that proposed Rule 5.189(5) essentially rolls over existing provisions in the CLWRP relating to Inanga Spawning Habitats (e.g. Rule 5.167(5)).
- (d) **Standard 6:** Proposed Rule 5.189(6) states that plantation forestry activities must not reduce the size of a wetland. This is likely to be more stringent than the NES-PF as it relates to any wetland, whereas the NES-PF includes requirements for plantation forestry activities to be setback from wetlands greater than 0.25ha⁴⁶.
- (e) **Standard 7:** The 20m setback to surface waterbodies and bores in proposed Rule 5.189(7)(a) is more stringent than corresponding regulation 104(2) in the NES-PF relating to fuel storage, which requires a 10m setback to waterbodies. Proposed Rule 5.189(7)(b) is also more stringent than the NES-PF.

Overall assessment

- 62 My high-level assessment of proposed Rule 5.189 concludes that nearly all standards – most of which have been rolled over from CLWRP - are more stringent than the NES-PF. However, there is no evidence provided in the PC7 section 32 report to justify why these standards are required to be more stringent than the NES-PF in the context of the Canterbury region. I address this in more detail below.

⁴³ There has been some minor redrafting of these two standards in Appendix E-Part 1 of the PC7 section 42A report. I agree with the ECan explanatory note that these amendments are not a material change but help to clarify the wording.

⁴⁴ As noted in the NES-PF Plan Alignment Guidance, pg.36.

⁴⁵ I note that the PC7 section 42A report recommends that this standard is expanded to require discretionary activity resource consent where a plantation forestry activity is undertaken in a salmon spawning site listed in Schedule 17 of the CLWRP.

⁴⁶ For example, Regulation 14(3), 29, 54(3), 74(8).

JUSTIFICATION FOR MORE STRINGENT FORESTRY RULES THAN NES-PF

PC7 Section 32 Report

63 Section 5.2 of the PC7 section 32 report provides an evaluation of the PC7 forestry rules and the relationship between the NES-PF and the CLWRP. In summary, ECan has described the purpose of the proposal (i.e. the PC7 forestry rules) as:

"to observe the NESPF by identifying circumstances where rules that apply to plantation forestry activities can and should be more stringent than the NESPF, and where existing CLWRP rules manage effects that are not managed by the NESPF, in order to ensure that the objectives of the CLWRP continue to be met"⁴⁷.

64 The PC7 section 32 report also states that the following CLWRP objectives are relevant to the PC7 forestry rules:

3.8 The quality and quantity of water in fresh water bodies and their catchments is managed to safeguard the life-supporting capacity of ecosystems and ecosystem processes, including ensuring sufficient flow and quality of water to support the habitat and feeding, breeding, migratory and other behavioural requirements of indigenous species, nesting birds and, where appropriate, trout and salmon.

3.18 Wetlands that contribute to cultural and community values, biodiversity, water quality, mahinga kai, water cleansing and flood mitigation are maintained⁴⁸

65 As noted in paragraph 37 to 44 of my evidence, Regulation 6(1)(a) of the NES-PF allows plan rules to be more stringent when these give effect to an objective developed to give effect to the NPS-FM. While the PC7 section 32 report makes general reference to the NPS-FM and the CLWRP objectives that are relevant to the PC7 forestry rules, in my opinion it does not adequately demonstrate why the more stringent PC7 forestry rules are necessary to achieve those objectives⁴⁹ and that the NES-PF is not sufficient to meet those objectives. I consider that this assessment is required to demonstrate the more stringent approach through the PC7 forestry rules is justified in the context of the Canterbury region in accordance with section 32(4) of the RMA.

66 Another significant omission in my opinion in the PC7 section 32 report relates to the identification of reasonably practicable options as required under section 32(1)(b)(i) of the RMA. The section 32 report identifies three potential options to address the relationship between the CLWRP and NES-PF:

⁴⁷ PC7 section 32 report, pg. 53.

⁴⁸ Ibid, pg. 53.

⁴⁹ This is discussed further at page 56 but is still high-level and provides limited detail on the relationship between the PC7 forestry rules and the achievement of the CLWRP objectives.

- (a) **Status quo** –roll over the operative regional wide rules that are more stringent than the NES-PF;
- (b) **PC7A changes** – i.e. introduce new rules 5.189 and 5.190 specifically managing plantation forestry activities; or
- (c) **Amend existing rules** – i.e. existing rules are amended slightly with specific conditions regarding TSS, visual clarity and inanga habitat restrictions that apply to forestry activities in addition to the NES-PF.

67 The PC7 section 32 report does not identify implementing the NES-PF as it stands as a reasonably practicable option. As outlined above, in my opinion, the NES-PF should be the starting point for forestry rules across New Zealand and the only rationale to deviate from these should be where greater stringency is required to manage the specific issues anticipated under Regulation 6. Thus, the section 32 evaluation should focus on any additional controls on plantation forestry in addition to the NES-PF and the NES-PF should certainly not be omitted as a reasonably practicable option.

68 In my opinion, the fundamental gap in the PC7 section 32 report is the absence of any clear evidence or analysis to demonstrate that more stringent PC7 forestry rules are justified in the particular context of the Canterbury region. The 'stringency justification' provided in the PC7 section 32 report is (**emphasis added**):

"Section 32(4) states that if a proposal will impose a greater or lesser prohibition or restriction on an activity to which an NES applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the provision or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect. In this case, the conditions included in Rule 5.189 collectively represent the provisions currently in the CLWRP which are considered to be more stringent than the NESPF. Imposing greater restrictions on plantation forestry activities is justified in these circumstances because managing the particular matters outlined in the conditions of Rule 5.189 is necessary in order to achieve freshwater objectives in the CLWRP developed in accordance with the NPSFM and continue to manage activities that are not managed under the NESPF. In turn, this provides for the CLWRP to give effect to the objectives of the NPSFM⁵⁰.

69 In my opinion, it is not sufficient to simply 'roll-over' existing provisions that are more stringent than a (recently enacted) NES without clearly demonstrating that these are justified in accordance with section 32(4) of the RMA. As I have advised previously, the circumstances described in Regulation 6 are not in of themselves

⁵⁰ Ibid, pg. 59-60.

sufficient justification for more stringent rules. The starting point for forestry rules under the RMA is now the NES-PF. Regulation 6 only enables more stringent rules only when it can be demonstrated that the NES-PF is not sufficient and a more stringent approach is necessary to meet the circumstances described in that regulation within the context a particular region or district.

- 70 While there is an absence of relevant case law on section 32(4) of the RMA, in my opinion this evaluation should an assessment of (in this case):
- (a) The adequacy of the NES-PF regulations to manage the environmental effects of concern (i.e. suspended sediment, wetland disturbance, indigenous fish and inanga spawning habitats);
 - (b) Regionally and catchment specific factors and values that warrant a more stringent approach than the NES-PF, which was designed to improve (or at least maintain) environment outcomes; and
 - (c) The efficiency and effectiveness of the more stringent provisions compared to the NES-PF, including environmental, economic, social and cultural benefits and costs.
- 71 In my opinion, the PC7 section 32 report does not adequately meet these requirements. For example, there is no assessment of:
- (a) The adequacy of the NES-PF to manage the effects of plantation forestry within the Canterbury region. This point is particularly important as the NES-PF had been in force for over a year when PC7 was notified so there should be some clear analysis and evidence to demonstrate why more stringent controls than the NES-PF are necessary. However, my understanding (based in the evidence of Mr Mann) is that the effectiveness of the NES-PF and the proposed PC7 forestry rules were not discussed with forestry companies in the region prior to PC7 being introduced.
 - (b) Regionally specific factors and values that may justify more stringent rules (for example, catchments particularly sensitive to the effects of plantation forestry activities).
 - (c) The economic costs to foresters associated with the more stringent provisions in PC7. This is discussed in the evidence of Mr Mann with specific reference to the potential uncertainty and costs that may result from the TSS discharge limits in proposed Rule 5.189(3). For example, Mr Mann notes that this standard this may result in harvesting operations needing to be stopped (daily operating costs of \$7,000 to \$14,000) which would have significant implications for contractors and wood supply in the region. Mr Mann also provides an indication of the potential costs to obtain a sediment discharge consent under PC7 to authorise earthworks and harvesting

activities with the Omihi Forest and indicates that these costs are likely to be significant.

- 72 In my opinion, the lack of consideration of these factors in the PC7 section 32 report is inconsistent with good planning practice and arguably fails to meet the requirements of section 32(4) of the RMA.

PC7 Section 42A Report

- 73 ECan produced a section 42A report for PC7 (**PC7 section 42A report**) on March 2020⁵¹. Part 3, section 3 of the PC7 Section 42A report addresses submissions that relate to the relationship between PC7 and the NES-PF and the additional restrictions in PC7 compared to the NES-PF.
- 74 Paragraphs 3.35 to 3.40 of the PC7 Section 42A report addresses concerns raised in the submission of Rayonier New Zealand Limited and Port Blakely Limited that the TSS discharge limits in proposed Rule 5.189(3) is unduly stringent, uncertain, impracticable, and not supported by sufficient evidence. The PC7 section 42A report responds to these concerns by explaining the purpose of the TSS discharge limit and the adverse effects associated with the discharge of sediments on water quality and aquatic species. I note that this analysis is general rather than specific to the Canterbury region with the key points in the PC7 section 42A report relating to adverse effects of new suspended and deposited fine sediment in waterbodies that the TSS standard seek to manage.
- 75 On this basis, the PC7 Section 42A report recommended that relief sought by Rayonier New Zealand Limited and Port Blakely Limited to delete or address Rule 5.189(3) is rejected.
- 76 I am not questioning the need to manage the effects of sediment discharges on water quality and ecosystem health. That is not the issue here. The question is whether there is evidence to demonstrate that a more stringent approach for sediment discharges in proposed Rule 5.189(3) than the NES-PF is justified in the context of the Canterbury region.
- 77 In this respect, I note that the PC7 Section 42A report does provide any specific analysis to demonstrate this as required under section 32(4) of the RMA (and section 32 in general). As such, it fails to address one of the overarching concerns with the PC7 forestry rules raised in the submission of Rayonier New Zealand Limited and Port Blakely Limited⁵².

⁵¹ Environment Canterbury (2020), '*Section 42A Report: Plan Change 7 to the Canterbury Land and Water Regional Plan; and Plan Change 2 to the Waimakariri River Regional Plan*'.

⁵² Refer, paragraph 9(e) of submission.

CONCLUSION

- 78 My evidence has provided an overview of the NES-PF focusing on the regulations relating to the management of sediment and the ability for plan rules to be more stringent under Regulation 6. This demonstrates that the NES-PF includes a range of regulations that have been designed to effectively prevent and manage sediment discharges from plantation forestry activities. Collectively, these regulations focus on controlling and containing sediment runoff at source and ensuring appropriate setbacks to sensitive receiving environments. The NES-PF section 32 report concluded that these regulations are effective and efficient to achieve the NES-PF objective of maintaining or improving environmental outcomes.
- 79 ECan is proposing two rules specifically relating to plantation forestry activities in PC7 that are intended to prevail over the NES-PF, and foresters are expected to comply with both (although this is an area of uncertainty that should be addressed). The basis for the more stringent PC7 forestry rules seems to be largely based on an assessment by ECan of existing rules in the CLWRP which are more stringent than the NES-PF and then effectively rolling these into PC7 because Regulation 6(1) states that such rules "can and should be more stringent than the NESPF"⁵³. The PC7 section 32 report also identifies the CLWRP objectives the PC7 forestry rules relate to and notes that these objectives give effect to the NPS-FM⁵⁴.
- 80 However, in my opinion, simply proving a link between a proposed rule and a plan objective that gives effect to the NPS-FM is not sufficient to meet the requirements of Regulation 6(1)(a) and section 32(4) of the RMA. Regulation 6 on itself does not justify more stringent rules – it provides an opportunity for more stringent rules in certain circumstances when site-specific factors warrant this. In my opinion, the starting point for forestry rules is now the NES-PF. More stringent forestry rules should only be proposed when it can be demonstrated that the NES-PF is not sufficient to meet plan objectives, and a more stringent approach is necessary within the context of a particular region/district to provide for the circumstances described in Regulation 6.
- 81 In my opinion, ECan has not sufficiently meet these requirements through the PC7 section 32 report. In particular, the report does not include any specific analysis of: the adequacy of the NES-PF to manage the effects of plantation forestry within the Canterbury region; regionally specific factors and values that may justify more stringent rules than the NES-PF; and efficiency and effectiveness of the more stringent PC7 provisions compared to the NES-PF (as the NES-PF was not identified as a reasonably practicable option). In my opinion, the lack of consideration of these matters in the PC7 section 32 report is inconsistent with good planning practice and arguably fails to meet the requirements of section 32(4) of the RMA.

⁵³ PC7 section 32 report, pg. 53.

⁵⁴ Ibid, pg.56.

- 82 In my opinion, it is also not good planning practice to simply 'roll over' plan provisions that are more stringent than an NES without reassessing the need and appropriateness for such provisions. This is inconsistent with the general intent of RMA national direction (and specifically NES) to provide greater national consistency and certainty. and the hierarchy of planning instruments under the RMA whereby NES take precedence over regional and district plan rules.
- 83 Thank you for the opportunity to present my evidence.

Jerome Wyeth

17 July 2020