

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

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

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INTRODUCTION

- 1 My name is Jerome Geoffrey Wyeth.
- 2 I prepared Evidence in Chief, dated 17 July 2020, for Rayonier New Zealand Limited and Port Blakely Limited in relation to their submission on Proposed Plan Change 7 (PC7) to the Canterbury Land and Water Regional Plan (CLWRP).
- 3 My qualifications and experience are as outlined in that Evidence in Chief.
- 4 I repeat the confirmation that I have read the Code of Conduct for expert witnesses and that my evidence has been prepared in compliance with that Code.
- 5 My Evidence in Chief addressed the following:
 - (a) Overview of the National Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (NES-PF) and its sediment management regulations;
 - (b) Overview of the PC7 forestry rules¹ and the relationship with corresponding regulations in the NES-PF (where applicable); and
 - (c) An assessment of whether there is sufficient justification for more stringent rules than the NES-PF in PC7 and supporting statutory documents.
- 6 This is a summary of the key issues raised in my Evidence in Chief. It focuses on where plan rules may be more stringent than the NES-PF, the requirements to demonstrate more stringent rules are justified in the context of a particular region or district under section 32(4) of the Resource Management Act 1991 (RMA), and whether sufficient justification for the more stringent PC7 forestry rules has been provided in the section 32 evaluation report for PC7.
- 7 In addition, this summary of evidence provides commentary on the implications of the National Policy Statement for Freshwater Management 2020 (NPS-FM 2020) in respect of the PC7 forestry rules. The introduction of the NPS-FM 2020 was signalled in my Evidence in Chief² and this was subsequently gazetted on 3 August 2020 and now has legal effect. The NPS-FM 2020 has a bearing on the matters discussed in my Evidence in Chief which I provide commentary on to assist the Panel in its consideration of the PC7 forestry rules.

SUMMARY OF KEY ISSUES

Overview of NES-PF

- 8 The NES-PF was gazetted on 31 July 2017 and came into force on 1 May 2018. 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.

¹ Proposed Rule 5.189 and 5.190 in PC7.

² Paragraph 32 of my Evidence in Chief.

- 9 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.
- 10 The NES-PF includes a number of provisions to manage sediment discharges and run-off from plantation forestry activities. Collectively, the sediment management regulations in the NES-PF focus on controlling and containing sediment run-off at source and ensuring appropriate setbacks to sensitive receiving environments. The key NES-PF sediment discharge regulations summarised in my Evidence in Chief are setbacks, management plan, erosion and sediment controls, and water quality mixing standards³.

Regulation 6 - Where plan rules may be more stringent than the NES-PF

- 11 Regulation 6 of the NES-PF sets out the circumstances when plan rules may be more stringent than the NES-PF. 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:

- 12 Where councils are proposing a new rule that is more stringent than a NES, or 'rolling over' an existing stringent rule than a NES, section 32(4) of the RMA requires the evaluation to demonstrate that the more stringent rule is justified in the context of the particular region or district. Section 32(4) 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.

- 13 This is important statutory requirement in the context of PC7 and Regulation 6(1)(a) of the NES-PF. Statutory requirements and good planning practice both emphasise the need to exercise stringency over a NES in a very considered, transparent and robust manner when developing plan rules⁴. This reflects the hierarchy of planning instruments under the RMA and the general purpose of NES

³ Paragraph 18-32.

⁴ For example, what provisions apply in the event of conflict and whether the PC7 sediment discharge standards apply **in addition** to the NES-PF or instead of (because these are more stringent).

to provide national consistency and certainty on significant resource management issues.

Relationship between PC7 forestry rules and the NES-PF

- 14 My Evidence in Chief discusses the relationship between the PC7 forestry rules which form part of PC7A (a region-wide omnibus plan change) and the NES-PF. I identify a number of areas that would benefit from great clarity. I also provide a high-level assessment of proposed Rule 5.189 against the corresponding provisions in the NES-PF (where applicable). My assessment concludes that nearly all standards in proposed Rule 5.189 – most of which have been rolled over from the CLWRP - are more stringent than the NES-PF.
- 15 The sediment discharge standard in proposed Rule 5.189(3) is of particular interest to forestry operators in the region as this presents some practical and compliance issues. It is difficult to compare this standard with the range of regulations relating to sediment management in the NES-PF. However, the key difference in my opinion is that proposed Rule 5.189(3) imposes an absolute, region wide approach⁵ to manage sediment based on numeric Total Suspended Solid (**TSS**) discharge limits whereas the sediment management regulations in the NES-PF are based on a more pragmatic and targeted management approach, with additional controls where risks are greater.

Justification for more stringent rules in the PC7 section 32 evaluation report

- 16 My Evidence in Chief discusses the justification for more stringent forestry rules in the PC7 section 32 evaluation report. In summary, the justification for the more stringent forestry rules in the PC7 section 32 evaluation report is based on:
- (a) An assessment by Environment Canterbury (**ECan**) of existing rules in the CLWRP that are more stringent the NES-PF and incorporating these into two new rules specifically addressing plantation forestry activities to ensure *“rules which give effective to a freshwater objective continue to apply”*⁶;
 - (b) An assessment that the conditions in the PC7 forestry rules are important for the achievement of CLWRP freshwater objectives that give effect to the NPS-FM 2014, and identification of CLWRP objectives that are particularly relevant to the PC7 forestry rules (Objective 3.8, 3.16, 3.18)⁷.
 - (c) An assessment that applying additional restrictions to plantation forestry activities in addition to the NES-PF *“provides a more efficient and effective approach to managing natural resources in the region while giving effect to the requirements set out in the NPSFM and NESPF”*⁸.

⁵ Acknowledging that proposed Rule 5.189(3) does apply different standards for spring-fed rivers, Banks Peninsular rivers, and lakes compared to other rivers and artificial watercourses.

⁶ PC7 section 32 evaluation report, pg 52.

⁷Ibid, pg. 53 and 56.

⁸ Ibid, pg. 60.

- (d) A 'stringency justification' whereby the existing CLWRP conditions which "*collectively represent the provisions currently in the CLWRP which are considered to be more stringent than the NESPF*" are identified and are justified on the basis that these conditions are "*necessary in order to achieve freshwater objectives in the CLWRP developed in accordance with the NPSFM*"⁹.
- 17 In my opinion, the PC7 section 32 evaluation report does not provide sufficient evidence or analysis to demonstrate that more stringent PC7 forestry rules are justified in the particular context of the Canterbury region in accordance with section 32(4) of the RMA. It is not sufficient to simply 'roll-over' existing provisions that are more stringent than a (recently enacted) NES without reassessing the appropriateness of the provisions and clearly demonstrating that the more stringent provisions are justified in that particular context (and the NES-PF provisions are deficient in that regard).
- 18 Regulation 6 itself does not justify more stringent rules – it allows stringent rules in certain circumstances when site-specific factors warrant this. In my opinion, the starting point for forestry rules under the RMA is now the NES-PF. More stringent forestry rules should only be proposed when it can be demonstrated that the NES-PF regulations are not sufficient to meet plan objectives that give effect to the NPS-FM, and a more stringent approach is necessary within the context of a particular region/district.
- 19 While there is an absence of relevant case law on section 32(4) of the RMA, in my opinion this evaluation should be based on 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 rules than the NES-PF, which was designed to improve (or at least maintain) environmental outcomes; and
- (c) The efficiency and effectiveness of the more stringent provisions compared to the NES-PF (as part of the section 32 evaluation).
- 20 In my opinion, the PC7 section 32 evaluation report does not adequately meet these requirements. For example, there is no assessment of the adequacy of the NES-PF to manage the effects of plantation forestry within the Canterbury region. There is also no assessment of efficiency and effectiveness of the more stringent conditions in the PC7 forestry rules compared to the NES-PF (as the NES-PF was not identified and assessed as a 'reasonably practicable option' in the section 32

⁹ Ibid, pg.60.

evaluation) or the economic costs to foresters associated with the more stringent standards.

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

IMPLICATIONS OF THE NPS-FM 2020 IN RESPECT OF PC7 FORESTRY RULES

- 22 My Evidence in Chief discusses the water quality standards in the NES-PF, noting that sediment was still being considered for inclusion as an attribute in the National Objectives Framework (**NOF**) when the NES-PF was being developed. Since this time, two sediment attributes have been developed and are now included in the recently gazetted NPS-FM 2020. The sediment attributes in the NPS-FM 2020 are suspended fine sediment (Table 8, Appendix 2A) and deposited fine sediment (Table 16, Appendix 2B), which both relate to the compulsory value ecosystem health (Appendix 1A).
- 23 The sediment attributes in the NPS-FM 2020 are relevant to the consideration of the PC7 forestry rules and the issues discussed in my Evidence in Chief, and in particular the sediment discharge standards in proposed Rule 5.189(3). PC7 must give effect to the NPS-FM 2020 to the extent practicable within these circumstances.
- 24 Full implementation of the NPS-FM 2020 in accordance with the NOF requires a number of distinct steps to be followed as set out in Subpart 2 of the NPS-FM 2020, including engagement with communities and tangata whenua. To fully give effect to the NPS-FM 2020 in relation to the new sediment attributes, ECan needs to:
- (a) Identify values and environmental outcomes that applies to each Freshwater Management Unit (**FMU**) or part of a FMU in the region (Clause 3.9).
 - (b) Identify the relevant attributes in Appendix 2A and 2B for (at a minimum) all the compulsory values (Clause 3.10(1)(a)), including suspended fine sediment and deposited fine sediment for the compulsory value ecosystem health (Appendix 1A).
 - (c) Set target attribute states for every attribute identified for a value and the site or sites the target attribute state applies (Clause 3.11(1)), including target attribute states for suspended fine sediment and deposited fine sediment.
 - (d) Identify limits on resource use that will achieve the target attribute states for suspended fine sediment and include the limits as rules in its regional plan (Clause 3.12(1)(a)). Prepare action plans for the target attribute states for deposited fine sediment within a specified timeframe (Clause 3.12(2)(a)). These limits and action plans may include regulations in the

NES-PF or more stringent regional rules (if justified under section 32(4) of the RMA).

- 25 As such, full implementation of the NPS-FM 2020 will require suspended fine sediment and deposited fine sediment to be managed in a manner that is targeted to the particular values and target attribute states for different FMUs in the Canterbury region.
- 26 PC7A was prepared prior to the NPS-FM 2020. It is an 'Omnibus' plan change that makes amendments to the regional-wide provisions in the CLWRP to respond to new directives from central government and emerging environmental issues. As such, it does not include specific targets or limits for sediment for different FMUs in the region as required under the NPS-FM 2020.
- 27 My understanding is that ECan does not have sufficient data on appropriate sediment target states for FMUs or input from community and tangata whenua to fully give effect to the NPS-FM 2020 in relation to sediment through PC7A. In these circumstances it would not be practicable for PC7 to give effect to the NPS-FM 2020 in relation to the sediment attributes in the NOF without undertaking a substantial amount engagement and technical work in relation to sediment. When that work is completed, I anticipate ECan will notify a plan change (or plan changes) with provisions relating to sediment that fully implement the NPS-FM 2020.
- 28 The question is then what is the most effective and efficient approach to manage sediment from plantation forestry in the interim period that gives effect to the NPS-FM 2020 to the extent practicable in these circumstances and is consistent with the requirements in section 32(4) of the RMA?
- 29 Objective 2.1(1) of the NPS-FM 2020 sets an overarching objective that natural and physical resources shall be managed in a way that prioritises: first, the health and well-being of waterbodies and freshwater ecosystems; second, the health needs of people; and third, the ability of people and communities to provide their social, economic, and cultural well-being.
- 30 It is outside the scope of this summary evidence to undertake a detailed assessment of the effectiveness and efficiency of the NES-PF provisions in achieving this overarching objective in the context of the Canterbury region. However, I am able to provide a high-level view based on my understanding of the NES-PF and the analysis of relevant NES-PF provisions discussed in my Evidence in Chief. In my opinion, the NES-PF objectives¹⁰ and regulations that achieve those objectives are consistent with overarching objectives 2.1(1)(a) and 2.1(1)(c) of the NPS-FM. This is because the NES-PF provision seeks to improve or maintain environmental outcomes for, among other matters, freshwater quality and increase the efficiency and certainty in the management of plantation forestry activities.

¹⁰ Referred to in paragraph 10 of my Evidence in Chief,

- 31 In my opinion, there are sound reasons for the NES-PF to prevail in this interim period given the limited justification given for more stringent PC7 forestry rules and the fact these rules will soon need to be significantly amended by a future plan change (or plan changes) to give full effect to the NPS-FM 2020.
- 32 It is through the NOF prescribed in Subpart 2 of the NPS-FM 2020 that ECan will be able to determine whether more stringent rules than the NES-PF are required to achieve target attribute states for sediment, and then justify those more stringent provisions in accordance with section 32(4) of the RMA and Regulation 6(1)(a) of the NES-PF.
- 33 In my opinion, this more robust approach is consistent with the intent of these two national direction instruments, good planning practice, and the general hierarchy of planning instruments under the RMA.
- 34 Thank you for the opportunity to present my evidence.

Jerome Wyeth

12 November 2020