

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE
TIMARU DISTRICT 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 the Proposed Timaru District
Plan (**PTDP** or **the Proposed Plan**)

AND

IN THE MATTER OF

Submissions and Further Submissions on the
Proposed Timaru District Plan by **Port Blakely
Limited**

**EVIDENCE OF MELISSA LEANNE PEARSON
ON BEHALF OF PORT BLAKELY LIMITED REGARDING HEARING (D) NATURAL
ENVIRONMENT**

Dated: 25 October 2024

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INTRODUCTION

- 1 My name is Melissa Leanne Pearson.
- 2 I am a Principal Planning and Policy Consultant at SLR Consulting New Zealand (**SLR**) where I have been employed since 2015. I have 16 years' experience as a resource management practitioner in New Zealand, which has included working for both the private sector and for central and local government on a range of resource consent and policy projects.
- 3 I hold a Bachelor of Planning (First Class Honours) from the University of Auckland and I am a Full Member of the New Zealand Planning Institute.
- 4 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 hearings and attending Environment Court mediation. 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 In 2017-2018, I was part of a team working 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 became involved in the process during the final development of the regulations and preparation of the section 32 evaluation. I was also involved in drafting the guidance to support the implementation of the NES-PF, including the preparation of the NES-PF Plan Alignment Guide (May 2018) that was developed to assist local authorities understand their obligations to give effect to the NES-PF through plan drafting. I led implementation road shows with local authorities across the North Island in 2018 to assist local authorities understand their obligations under the NES-PF. A key focus of my involvement was explaining the circumstances where plan rules are able to be more stringent than the NES-PF (Regulation 6).

- 6 My role in relation to the Timaru Proposed District Plan (**Proposed Plan**) is as an independent expert witness to Port Blakely Limited (**Port Blakely**) on Significant Natural Area (**SNA**) and Natural Character riparian margin provisions that, in my opinion, do not have sufficient justification for being more stringent with respect to commercial forestry than the Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 (**NES-CF** – previously the NES-PF).
- 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 will 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 In my evidence I address the following topics:
- (a) The purpose of the NES-CF and the key changes compared to the previous NES-PF;
 - (b) The key tests in Regulation 6 of the NES-CF and section 32(4) of the RMA that must be followed to justify a rule in a district plan being more stringent than the NES-CF;
 - (c) An analysis of the following proposed provisions, including whether the provision has been sufficiently justified by the relevant section 32 report, consideration of the section 42A officer's assessment and the requested relief to address concerns raised by Port Blakely:
 - (i) ECO-R1;
 - (ii) NATC-R1;
 - (iii) NATC-R3; and
 - (iv) NFL-R7.1.

- 9 In preparing this statement of evidence I have considered the statement of evidence provided by Barry Wells (Port Blakely) in respect of forestry operations.

SUMMARY OF MY EVIDENCE

- 10 My evidence concludes that the amendments recommended by the reporting officer in the section 42A report largely address the concerns raised by Port Blakely with respect to the ECO, NATC and NFL chapters of the Proposed Plan. I support the recommended approach of using advice notes to make it clear that specific rules in the ECO and NATC chapters do not apply to commercial forestry activities regulated under the NES-CF, which negates the need for amendments to the policy and rule frameworks. I also support the recommended amendments to NFL-R7.1 to better align with Regulations 13 and 15 of the NES-CF.
- 11 The only additional change I recommend is to ensure the advice notes relating to commercial forestry activities being regulated under the NES-CF are applied consistently across the ECO and NATC chapters, particularly with respect to the rules applying to earthworks and indigenous vegetation clearance in High Naturalness Water Bodies.

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 that involved significant input from central government agencies, local authorities, forestry representatives and environmental groups over a number of years¹. The policy objective of the NES-PF is to:

- a) *Maintain or improve the environmental outcomes associated with plantation forestry activities nationally; and*
- b) *Increase efficiency and certainty in the management of plantation forestry activities.*²

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

- 13 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 outcomes³. 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."⁴*

- 14 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 the NES-CF (previously NES-PF)

- 15 The NES-PF was replaced by the NES-CF on 3 November 2023. 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 plantation forestry activities. The NES-CF includes comprehensive permitted activity conditions that are more targeted and specific to plantation forestry activities than existing regional and district plan

³ 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'.

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

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

⁶ Slash traps, indigenous vegetation clearance, vegetation clearance.

rules. The permitted activity conditions in the NES-CF include (my emphasis added to text from the NES-PF User-Guide, which I consider is still relevant to interpreting the NES-CF):

*“**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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- 16 The NES-CF permitted activity conditions in the NES-CF are deliberately comprehensive and robust 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). The NES-CF also requires a 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 Classification⁸.
- 17 By providing a nationally consistent set of provisions that are specifically targeted to the environmental effects of different plantation forestry activities, the NES-CF creates both greater certainty for the plantation forestry sector while also ‘raising the bar’ (or at least maintaining it) in terms of environmental outcomes.

Differences between the NES-PF and the NES-CF

- 18 The key drivers for amending the NES-PF and gazetting a replacement NES-CF were:
- (a) To give local authorities more power to control afforestation, which means that councils and communities are better able to influence where new forests are located; and

⁷ NES-PF User Guide, pg.2.

⁸ Regulation 35(2)(b) and 61(4)(a)

- (b) To apply the regulations to both plantation forestry and exotic continuous-cover forests⁹ (sometimes known as carbon forests) that are deliberately established for commercial purposes. This is to ensure that all exotic forests that are planted for commercial purposes, including carbon sequestration, are now managed under consistent national direction.

19 A number of amendments have been made to regulations that manage forestry through the introduction of the NES-CF. A full summary of the amendments can be found in Appendix 1 to the *"NES-PF User Guide Addendum on Amendments since 3 November 2023"*¹⁰, which sets out a side-by-side comparison table of definitions and regulations that have been amended. However, the key changes that I consider to be relevant to the Proposed Plan provisions are summarised as follows:

- (a) The introduction of a new definition for 'commercial forestry', which includes both exotic continuous-cover forestry and plantation forestry, and the substitution of the term 'commercial forestry' in place of 'plantation forestry' throughout the NES-CF.
- (b) Stronger regulations to manage wilding tree risk, including requiring foresters to provide the calculation workings alongside the wilding tree risk calculator score (Regulation 11(4) for afforestation and Regulation 79(5) for replanting), stronger requirements for wilding conifer removal in wetlands and significant natural areas (Regulations 79(6) and 79(7)) and a new controlled activity status for replanting on

⁹ In the NES-CF, "exotic continuous-cover forest or exotic continuous-cover forestry—
 (a) means a forest that is deliberately established for commercial purposes, being at least 1 ha of continuous forest cover of exotic forest species that has been planted and—
 (i) will not be harvested or replanted; or
 (ii) is intended to be used for low-intensity harvesting or replanted; and
 (b) includes all associated forestry infrastructure; but
 (c) does not include—
 (i) a shelter belt of forest species, where the tree crown cover has, or is likely to have, an average width of less than 30 m; or
 (ii) forest species in urban areas; or
 (iii) nurseries and seed orchards; or
 (iv) trees grown for fruit or nuts; or
 (v) long-term ecological restoration planting of indigenous forest species; or
 (vi) willows and poplars space planted for soil conservation purposes"

¹⁰ May 2024, Version 1.0 - www.mpi.govt.nz/dmsdocument/62152-NES-CF-NES-PF-user-guide-addendum-on-amendments-since-3-November-2023

land with a wilding tree risk calculator score of 12 or higher (Regulation 80).

- (c) New requirements for management plans for afforestation (Regulation 10A/Schedule 3) and replanting (Regulation 77A, Schedule 3) to improve environmental outcomes, including wilding tree risk.

ALIGNING A DISTRICT PLAN WITH THE NES-CF

20 Local authorities are obligated to take certain steps to align their plans with the NES-CF and to make it clear to plan users in what circumstances the NES-CF applies versus provisions in a regional or district plan. These steps are set out in Section 1.2 of the NES-PF Plan Alignment Guide¹¹ but I have summarised them here for ease of reference:

- (a) Local authorities can include plan rules that are more stringent than the NES-CF if those rules meet the requirements of Regulation 6 of the NES-CF.
- (b) If a local authority wishes to include a plan rule that is more stringent under Regulation 6, then it must undertake an evaluation under section 32(4) of the RMA to specifically consider whether a more stringent rule is justified in the context of the region/district.
- (c) For all other plan rules that impact forestry but are not covered by the circumstances in Regulation 6, local authorities are required to identify if those rules duplicate or conflict with the NES-CF and remove that duplication or conflict in accordance with section 44A of the RMA.
- (d) Local authorities can manage adverse effects associated with forestry that are not regulated under the NES-CF, e.g. effects on cultural and historic heritage are not regulated. However, the starting point is that if the NES-CF states that an activity is permitted, a plan rule may only deal with effects of that activity that are different from the effects dealt with in the NES-CF (section 43A(5)(b) of the RMA). Otherwise, if

¹¹ May 2018, Version 1.0 - www.mpi.govt.nz/dmsdocument/27720-Resource-Management-Regulations-guidance-National-Environmental-Standards-for-Plantation-Forestry

the plan rule deals with the same effect, then the NES-CF equivalent provision prevails (section 43A(5)(c) of the RMA).

- 21 As part of the plan alignment process, the Plan Alignment Guide is clear that it is best practice for the regional or district plan to explicitly identify the particular plan rules that are more stringent than the NES-CF and/or manage adverse effects of forestry that are not regulated by the NES-CF and include text in the plan stating this¹². This is to ensure that plan users have certainty as to which rules prevail over, or need to be considered in addition to, the NES-CF regulations. This would include rules that are intended to be more stringent than the NES-CF and specifying which regulations they prevail over.
- 22 The best practice process for removing duplication or conflict also requires a local authority to explicitly exempt commercial forestry activities from more general rules in regional or district plans to remove confusion as to which provision applies.

REGULATION 6 OF THE NES-CF

- 23 A NES may expressly state that a plan rule may be more stringent or lenient and prevail over the standard¹³.
- 24 The ability for plan rules to be more stringent than the NES-CF was a complex and contentious issue when developing the original NES-PF and remains so with respect to the NES-CF. 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 not adequately protect locally significant and/or sensitive receiving environments in all circumstances. The NES-CF 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.
- 25 Regulation 6 of the NES-CF sets out the circumstances when plan rules **may** be more stringent than the NES-CF (my emphasis). These circumstances broadly relate to giving effect to other national direction instruments (the NPS-FM and New Zealand Coastal Policy Statement 2010 (NZCPS)), the

¹² Ibid, Section 1.2, pg. 2

¹³ Section 44B(1)-(4) of the RMA

protection of certain matters under section 6(b) and 6(c) of the RMA, and the protection of 'unique and sensitive environments'.

- 26 The Ministry for Primary Industries published the NES-PF Plan Alignment Guidance, which includes specific guidance on where plan rules may be more stringent than the NES-PF (now NES-CF) under Regulation 6.¹⁴ 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"*.¹⁵
- 27 It is not explicitly clear from the section 32 reports accompanying the Proposed Plan as to which parts of Regulation 6 have been relied on as justification for including more stringent rules than the NES-CF for forestry, or whether the section 32 authors are instead relying on section 43A(5)(b) of the RMA to manage effects of commercial forestry not regulated by the NES-CF. I will discuss this deficiency in analysis in more detail with respect to individual provisions in paragraphs 35-80 of my evidence.

THE TESTS OF SECTION 32(4) OF THE RMA

- 28 Where councils are proposing a new rule that is more stringent than the NES-CF, 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.

- 29 The requirement to demonstrate that proposed rules are justified in the context of the particular region/district is important as the circumstances provided for in Regulation 6 are not in of themselves justification for more

¹⁴ 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.

¹⁵ *Ibid.*, pg. 17.

stringent rules – they simply allow more stringent rules in certain circumstances when site-specific factors warrant this. The use of the phrase “may be more stringent” in Regulation 6 is deliberate – it indicates that there must be further analysis of why the additional stringency is required, beyond merely identifying the part of Regulation 6 that is being relied upon as justification for the rule. Section 32(4) then sets out what this further analysis must consider to justify the more stringent plan rules.

- 30 In my opinion, the starting point when assessing the need for a more stringent rule under any part of Regulation 6 is firstly to demonstrate the NES-CF controls are not sufficient to achieve the outcomes sought by Regulation 6. The next step is to then demonstrate how a more stringent rule will achieve that outcome in a more effective and efficient way than the NES-CF and that the more stringent rule is justified in the context of the particular region or district. Simply proving a link between a proposed rule and a circumstance set out in Regulation 6 is not sufficient to justify a more stringent rule, in my opinion.
- 31 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. I include analysis of why I consider that the section 32 reports for both the ECO and NATC chapters of the Proposed Plan are inadequate with respect to evaluating forestry related provisions under section 32(4), as set out in **Appendix 1** of my evidence.

SUMMARY OF PLAN ALIGNMENT ISSUES

- 32 Taking the above into account, it is my opinion in this evidence that the Proposed Plan has failed to properly align the Proposed Plan with the NES-CF, which has resulted in provisions where:
- (a) The Timaru District Council has not proven that they have jurisdiction to make a provision more stringent than the NES-CF under Regulation 6.
 - (b) There is no consideration of why the NES-CF regulations are inadequate to manage a particular effect on a Regulation 6 matter or why they are needed to manage an effect not regulated by the NES-

CF, with specific consideration of the Timaru context. This has resulted in deficient section 32(4) assessments.

- (c) There is no consideration of why the alternative provisions in the Proposed Plan are a more efficient and effective way to achieve an outcome sought by Regulation 6 of the NES-CF or manage effects not explicitly mentioned by the NES-CF compared to the equivalent regulations, resulting in deficient section 32(1)(b) assessments.

33 In addition, the Proposed Plan does not clearly identify whether proposed provisions impacting forestry activities apply instead of, or in addition to, the equivalent NES-CF regulations, so plan users have no certainty as to the combination of NES-CF regulations and proposed plan rules that apply when making an application for a forestry activity.

34 The sections of my evidence below go into more detail as to how these general plan development and NES-CF alignment issues have resulted in unclear and overly onerous provisions that have negative consenting implications for Port Blakely. The consenting implications and economic costs are covered in more detail in the evidence of Mr Barry Wells in paragraphs 59-67 of his evidence.

ECOSYSTEMS AND INDIGENOUS BIODIVERSITY PROVISIONS

ECO-R1(1) and (2)

Assessment of how the rules are more stringent than the NES-CF and their potential impact on commercial forestry

Overview of ECO-R1

35 ECO-R1 in the Proposed Plan is a permitted activity rule that manages the clearance of indigenous vegetation¹⁶ in various locations throughout the Timaru district. It sets out circumstances where indigenous vegetation clearance can occur as a permitted activity in SNAs (ECO-R1(1)) and in other environments, such as within certain distances of wetlands, mean high water springs, waterbodies, or waipuna (springs), or on land with an altitude over 900m or an average slope of 30° or greater (ECO-R1(2)).

36 Under both ECO-R1(1) and (2), the circumstances where indigenous vegetation clearance is a permitted activity are very limited. Permitted

¹⁶ Except as provided for in ECO-R2 for flood protection works or ECO-R3 for National Grid activities.

indigenous vegetation clearance in SNAs under ECO-R1(1) is limited to circumstances such as (but not limited to) clearance when there is "*imminent danger to human life, structures, or utilities*" (PER-1), clearance for Mahika kai or other customary uses by Ngāi Tahu (PER-3) or clearance to remove material infected by unwarranted organisms (PER-4).

- 37 The range of circumstances where indigenous vegetation clearance in other listed environments is permitted under ECO-R1(2) is slightly broader. Of note is the inclusion of ECO-R1(2), PER-4(b), which states:

"PER-4

The clearance of indigenous vegetation that: ...

(b) has grown up under an area of lawfully established plantation forestry..."
is a permitted activity.

- 38 Indigenous vegetation clearance in a SNA that does not fall into one of the circumstances listed in ECO-R1(1) is a non-complying activity, while non-compliance with one of the circumstances listed in ECO-R1(2) is a restricted discretionary activity.

Comparison of stringency – ECO-R1(1)

- 39 The NES-CF already contains specific regulations to manage indigenous vegetation clearance. More specifically, the NES-CF permits indigenous vegetation clearance in SNAs for:
- (a) The clearance of an overgrowing forestry track associated with commercial forestry, if the track has been used within the last 50 years (Regulations 93(1) and 93(2)(d)); and
 - (b) Incidental damage¹⁷ in an area that is within or adjacent to any plantation forest, including a riparian zone (Regulation 93(4)).

¹⁷ Under Regulation 93(5), incidental damage is defined as:

(a) damage where the ecosystem will recover to a state where, within 36 months of the damage occurring, it will be predominantly of the composition previously found at that location; or
(b) damage to indigenous vegetation canopy trees that are greater than 15 m in height, where the damage does not exceed—

(i) 30% of the crown of any indigenous vegetation canopy trees and no more than 30% of those trees per 100 m of the indigenous vegetation perimeter length; or
(ii) 10 m in continuous length per 100 m of a riparian zone length (with the applicable riparian zone width); or

(c) if it occurs in a significant natural area, damage that—

- 40 In these two circumstances, ECO-R1(1) is more stringent than Regulation 93 of the NES-CF as it would require a resource consent for both forestry track clearance and incidental damage that would otherwise be permitted in SNAs under the NES-CF. ECO-R1(1) is also more stringent with respect to activity status. Failing to comply with Regulation 93 in the NES-CF is a restricted discretionary activity under Regulation 94, whereas it is a non-complying activity under ECO-R1(1).

Comparison of stringency – ECO-R1(2)

- 41 Regulation 93 of the NES-CF also manages indigenous vegetation clearance in the other listed environments¹⁸ in ECO-R1(2). The circumstances where indigenous vegetation clearance is permitted under Regulations 93(2), (3) and (4) are as follows:

“(2) Vegetation clearance of indigenous vegetation may occur within an area of a plantation forest if the indigenous vegetation—

- (a) has grown up under (or may have overtopped) plantation forestry; or*
- (b) is within an area of a failed plantation forest that failed in the last rotation period (afforestation to replanting) of the plantation forestry; or*
- (c) is within an area of plantation forest that has been harvested within the previous 5 years; or*
- (d) is overgrowing a forestry track, if the track has been used within the last 50 years.*

(3) Vegetation clearance of an area of indigenous vegetation located within or adjacent to a plantation forest may be carried out if—

- (a) the area of indigenous vegetation and the plantation forest are held in the same ownership; and*
- (b) the cumulative clearance does not exceed 1 ha or 1.5% (whichever is the greater) of the total area of indigenous vegetation within or adjacent to the plantation forest in which the clearance is proposed, but excluding any vegetation clearance under subclause (2).*

(4) Incidental damage is a permitted activity and may occur in an area that is within or adjacent to any plantation forest, including a riparian zone.”

- 42 In all of the circumstances listed in Regulation 93 above (except Regulation 93(2)(a)), ECO-R1(2) is more stringent than the NES-CF as it would require all of these clearance activities to obtain a resource consent when they are

(i) does not significantly affect the values of that significant natural area; and
(ii) allows the ecosystem to recover as specified in paragraph (a).

¹⁸ For example, within certain distances of wetlands, mean high water springs, waterbodies, or waipuna (springs), or on land with an altitude over 900m or an average slope of 30° or greater.

permitted under the NES-CF. In the case of Regulation 93(2)(a), it is duplicated by ECO-R1(2), PER-4(b) as both provisions state that indigenous vegetation that has grown up under a plantation forestry activity can be cleared as a permitted activity.

- 43 The activity status for failing to comply with Regulations 93(2), (3) or (4) is a restricted discretionary under Regulation 94, which is the same activity status as under ECO-R1(2). However, the restricted discretionary matters in ECO-R1(2) are broader than those listed in Regulation 94 (and therefore potentially more stringent in terms of the conditions that may be imposed). Examples of additional restricted discretionary matters in ECO-R1(2) that could result in additional, more onerous conditions on forestry activities include the condition and character of the indigenous vegetation (matter 2), the adverse effects on the mauri of the site, mahika kai, wāhi tapu or wāhi tāoka values (matter 5), and consideration of compensation (matter 8).

Section 42A analysis and recommendations

Port Blakely's primary submission

- 44 I have reviewed the sections of the Section 42A report: Ecosystems and Indigenous Biodiversity; Natural Character; and Natural Features and Landscapes (**the section 42A report**) that respond to the Port Blakely's primary submission on the ECO chapter, specifically:
- (a) Paragraphs 7.7.13, 7.7.14 and 7.7.20 in relation to ECO-P2
 - (b) Paragraphs 7.8.14 and 7.8.21 in relation to ECO-P5
 - (c) Paragraphs 7.13.19 to 7.13.21, 7.13.35 and 7.13.37 in relation to ECO-R1
- 45 Focusing on ECO-R1 first, I agree with the reporting officer's conclusion in paragraph 7.13.21 that the section 32 report for the ECO chapter did not evaluate the application of ECO-R1 to plantation forestry activities and that there was no reason given for applying a more stringent activity status for indigenous vegetation clearance associated with plantation forestry activities in the Timaru District. This aligns with my analysis of the inadequacies of the section 32 report, as set out in **Appendix 1** of my evidence. I also agree with the reporting officer's recommendation in paragraph 7.13.35 to include an advice note as part of ECO-R1 to explicitly state that the rule does not apply

to clearance of indigenous vegetation associated with a commercial forestry activity regulated under the NES-CF.

- 46 Although an advice note is not the relief initially sought by Port Blakely in their primary submission (being a combination of policy amendments and additional permitted conditions inserted into ECO-R1), I consider that an advice note achieves the same outcome, that is, clear and explicit direction that ECO-R1 does not apply to commercial forestry activities regulated under the NES-CF. I also agree with the reporting officer that using an advice note has the added advantage of avoiding potential duplication with NES-CF provisions and it creates a clear separation between the ECO chapter and the NES-CF regulations. For that reason, I also support the recommended deletion of ECO-R1.2 PER-4 a) and b) as this removes the parts of ECO-R1 that duplicate parts of Regulations 93 and 94 NES-CF.
- 47 With respect to policies ECO-P2 and ECO-P5, I can understand the reluctance of the reporting officer to include specific references to the NES-CF in the policies of the ECO chapter when the advice note added into the rule framework makes it clear that ECO-R1 does not apply to commercial forestry activities regulated under the NES-CF. As such, I agree that the requested amendments made by Port Blakely to ECO-P2 and ECO-P5 are no longer required.

Port Blakely's further submission

- 48 I have also reviewed several parts of the section 42A report that cover ECO chapter provisions that Port Blakely made a further submission on, specifically:
- (a) Paragraph 7.1.24 where the reporting officer recommends rejecting the submission made by Forest and Bird [156.6] relating to amending the Proposed Plan to ensure SNA are protected from plantation forestry and exotic carbon forests. I agree with the reporting officer that the relief sought by Forest and Bird is unclear and that the addition of advice notes clarifying the relationship between the ECO chapter and the NES-CF has confirmed that SNAs in the Timaru district will be protected under the NES-CF, which in my view provides sufficient protection.

- (b) Paragraph 7.18.7 where the reporting officer recommends rejecting the submission made by the Dir. General Conservation [166.47] to include wilding conifers in the rule that manages the planting of identified pest species. I agree with the reporting officer that wilding conifers are not 'planted' and that the NES-CF contains sufficient regulations to manage wilding conifer spread, as discussed in paragraphs 19(b) and (c) of my evidence.
- (c) Paragraphs 7.20.12 and 7.20.13 where the reporting officer recommends rejecting the submission made by Forest and Bird [156.11] requesting amendments to the definition of 'clearance of indigenous vegetation' to more closely align with NES-CF. I agree that the Proposed Plan definition should stand alone in the context that it is used in the ECO chapter and that there is no need for this definition to align with any part of the NES-CF.

49 However, I note that the reporting officer has recommended a package of amendments relating to the protection of indigenous biodiversity outside of SNAs and sensitive areas, as identified in ECO-P1 and ECO-P3. I understand from paragraph 7.9.7 of the section 42A report that the reporting officer considers that there is a gap in terms of how indigenous biodiversity outside SNAs and sensitive areas (including those areas that may not be currently identified as such but which may meet the criteria) is managed in the PDP and that they are recommending an additional policy (ECO-PX) and rule (ECO-R1.4) to address this. I can support these additional provisions on the basis that the reporting officer has recommended the inclusion of an identical advice note in ECO-R1.4 clarifying that the rule does not apply to the clearance of indigenous vegetation associated with a commercial forestry activity which is regulated under the NES-CF¹⁹. This ensures that ECO-R1 remains internally consistent and that there is a clear message sent to plan users that no relevant parts of ECO-R1 are more stringent than the NES-CF.

¹⁹ I note that there is an inconsistency between the proposed drafting of ECO-R1.4 in paragraph 7.1.27 of the section 42A report and Appendix 1 to that report, which contains the full mark up of the ECO chapter. The version of ECO-R1.4 in paragraph 7.1.27 does not include the NES-CF advice note, whereas the same rule does include the advice note in Appendix 1. I have relied on the version of the rule in Appendix 1 for my evidence as I note that the reporting officer acknowledges that the versions of rules in the section 42A report do not incorporate all amendments in a consolidated location, which is the role of Appendix 1.

50 For the same reasons as I can support the lack of amendments to ECO-P2 and ECO-P5 referring to the NES-CF, I can also support the same approach being applied to the new policy ECO-PX, provided that the advice note in ECO-R1.4 is included.

Recommended amendments

51 I recommend that the amendments made by the reporting officer to ECO-R1.1, ECO-R1.2 and ECO-R1.4 are accepted with respect to inclusion of the new advice notes relating to the NES-CF, for the reasons I have outlined above.

NATURAL CHARACTER

NATC-R1 and NATC-R3

Assessment of how the rule is more stringent than the NES-CF and potential impact on plantation forestry

Overview of NATC-R1

52 NATC-R1 in the Proposed Plan is a permitted activity rule that manages the clearance of vegetation in the riparian margins of a river that is not a High Naturalness Waterbody (**HNWB**²⁰). Under NATC-R1, the circumstances where vegetation clearance is a permitted activity are very limited, such as for customary harvest (PER-2), operation, maintenance or repair of the National Grid (PER-3) or for restoration or enhancement (PER-5).

²⁰ Means the surface water bodies which are identified:

1. As a High Naturalness Water Body in the Canterbury Land and Water Regional Plan; and
2. In Schedule 1 and items 1 and 2 in Schedule 2 of the Water Conservation (Rangitata River) Order 2006 as having outstanding characteristics or features including wild, scenic and other natural characteristics and amenity and intrinsic values.

being:

- a. Clyde River and all tributaries;
- b. Havelock Rivers and all tributaries;
- c. Ōrāri River and tributaries From the mouth of the gorge (at or about BY19:553-335 5133500N 1455300E) to the headwaters; and
- d. Milford Lagoon and Ōrakipaoa Creek From the mouth of the lagoon (at or about 5095987N 1468610E) to the confluence of Burkes Creek and Ōrakipaoa Creek (at or about 5097932N 1467093E).
- e. Rangitata River main stem from confluence with Clyde and Havelock Rivers to the top of the gorge (at or about J36:636174) "upper Rangitata";
- f. Rangitata River main stem from the top of the gorge (at or about J36:636174) to the water level recorder at Klondyke (at or about J36:666149) "the gorge".

- 53 Vegetation clearance in the riparian margins of a river that is not a HNWB that does not fall into one of the circumstances listed in NATC-R1 is either a controlled activity if it is for natural hazard mitigation works and is carried out by a local authority, otherwise it is a restricted discretionary activity.
- 54 If the vegetation clearance is within the riparian margins of a HNWB, resource consent is required for a discretionary activity.

Overview of NATC-R3

- 55 NATC-R3 in the Proposed Plan is a permitted activity rule that manages earthworks in the riparian margins of a river that is not a HNWB. Under NATC-R3, the circumstances where earthworks are a permitted activity are very limited, such as for the maintenance and repair of existing fences, tracks, roads or natural hazard mitigation works (PER-1) or for constructing a new track up to 3m in width (PER-3).
- 56 Earthworks in the riparian margins of a river that is not a HNWB that does not fall into one of the circumstances listed in NATC-R3 are either a controlled activity if they are for natural hazard mitigation works and are carried out by a local authority, otherwise they are a restricted discretionary activity.
- 57 If the earthworks are within the riparian margins of a HNWB, the permitted activity circumstances are even more limited (associated with existing fences, tracks, roads, natural hazard mitigation works or the National Grid). If the permitted conditions are not met, a controlled activity consent is required for natural hazard mitigation earthworks carried out by a local authority, otherwise earthworks are a discretionary activity.

Comparison of stringency – NATC-R1

- 58 The NES-CF already contains specific regulations to manage the clearance of both indigenous vegetation (Regulations 93 and 94) and non-indigenous vegetation clearance (Regulation 95). I have described the circumstances where indigenous vegetation clearance outside of SNAs is enabled as a permitted activity under the NES-CF in paragraph 41 of my evidence.
- 59 Under Regulation 95(1), non-indigenous vegetation clearance is permitted if it is associated with a permitted commercial forestry activity and if all

permitted activity conditions are met for that commercial forestry activity. If these requirements are not met, then:

- (2) *"If vegetation clearance of non-indigenous vegetation does not comply with subclause (1), it has the activity status that applies to the associated commercial forestry activity.*
- (3) *The matters of control or discretion are those that apply to the associated commercial forestry activity, and consent is required from the local authority that has functions in relation to the associated commercial forestry activity."*

60 NATC-R1 is more stringent than both Regulations 93 and 95 of the NES-CF for the following reasons:

- (a) All vegetation clearance in the riparian margins of a river that is not a HNWB associated with commercial forestry activities would require a restricted discretionary resource consent under NATC-R1, whereas all non-indigenous vegetation clearance is permitted under Regulation 95 and a wider range of indigenous vegetation clearance activities are permitted under Regulation 93.
- (b) Where the activity status is the same (i.e. restricted discretionary under NATC-R1 and also restricted discretionary under Regulation 94 for indigenous vegetation clearance not permitted under Regulation 93), the matters of discretion under NATC-R1 are broader than under Regulation 94 (and therefore potentially more stringent in terms of the conditions that may be imposed). In particular, the NATC-R1 matters include consideration of adverse effects on natural character (matters 1 and 2) and potential bank erosion (matter 5).

Comparison of stringency – NATC-R3

61 The NES-CF manages all earthworks associated with commercial forestry activities in Sub-part 3 of the NES-CF. All earthworks under the jurisdiction of a territorial authority are permitted (Regulation 23), however regional Regulation 29(1)(a) states that earthworks must not occur within 10m of a perennial river, except that:

- (3) *"The setbacks in subclause (1) do not apply—*
 - (a) *if the earthworks are for the construction and maintenance of a river crossing, a sediment or water control measure, or a slash trap or debris retention structure; or*

(b) if the earthworks within the setback will result in less than 100 m² of soil disturbance in any 3-month period, and are not within 5 m of the water body; or

(c) during the maintenance and upgrade of existing earthworks.”

- 62 NATC-R3 is more stringent than the most applicable NES-CF regulation, being Regulation 23, as this permits all earthworks associated with commercial forestry within the jurisdiction of a territorial authority.

Additional stringency considerations

- 63 In addition to the directly corresponding regulations for vegetation clearance and earthworks discussed above, the NES-CF also contains regional setbacks for a range of commercial forestry activities from waterbodies. While not directly for the purposes of managing natural character, the NES-CF already requires the following setbacks from perennial rivers (and by association any non-indigenous vegetation clearance associated with these activities under Regulation 95), in addition to the 10m setback for earthworks from perennial rivers in Regulation 29, as discussed above:

- (a) **Afforestation:** 5m setback from perennial rivers with a bankfull channel width of less than 3m and 10m setback from perennial rivers with a bankfull channel width of 3m or more (Regulation 14)
- (b) **Forestry quarrying:** 20m setback from perennial rivers of any width (Regulation 54)
- (c) **Harvesting:** 5m setback from perennial rivers with a bankfull channel width of less than 3m and 10m setback from perennial rivers with a bankfull channel width of 3m or more (Regulation 68)
- (d) **Mechanical land preparation:** 5m setback from perennial rivers with a bankfull channel width of less than 3m and 10m setback from perennial rivers with a bankfull channel width of 3m or more (Regulation 74)
- (e) **Replanting:** 5m setback from perennial rivers with a bankfull channel width of less than 3m and 10m setback from perennial rivers with a bankfull channel width of 3m or more (Regulation 78)
- (f) **Fuel storage and refuelling:** 10m setback from perennial rivers of any width (Regulation 104)

64 The definition of a 'riparian margin' in the Proposed Plan sets out the equivalent setbacks from rivers that are used in NATC-R1 and NATC-R3. This definition means that both NATC-R1 and NATC-R3 are more stringent with respect to the spatial extent of setbacks applied in the NES-CF to commercial forestry activities, as the Proposed Plan definition is as follows:

"Riparian margin means land that is within:

- (a) 10m of the bank edge of a river that is up to 3m wide (and is not listed in (c) below); and/or*
- (b) 20m of the bank edge of a river that is greater than 3m wide (and is not listed in (c) below); and/or*
- (c) 100m of the bank edges of the Rangitata; Ōpihi; and Ōrāri Rivers; and/or;*
- (d) 50m of any wetland."*

65 While these setbacks are not directly comparable with respect to stringency (i.e. because the NES-CF setbacks are regional regulations and the riparian margin setbacks are district plan provisions), it demonstrates how much additional commercial forestry land either side of a river would be impacted by both NATC-R1 and NATC-R3 compared to how the NES-CF manages commercial forestry activities in relation to perennial rivers. This is particularly relevant when considering earthworks under NATC-R3 (setbacks for rivers ranging from 10m to 100m depending on width and location) compared to earthworks under regional Regulation 29 (10m setback from perennial rivers, regardless of width or location).

66 There is also a further difference with respect to the terms 'river' (used in NATC-R1) and 'perennial river' (used in the NES-CF) as follows:

'River – means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)²¹;

'Perennial river – means a river that is a continually or intermittently flowing body of freshwater, if the intermittent flows provide habitats for the continuation of the aquatic ecosystem.²²

67 The critical difference between these terms, in my opinion, is the reference to *"if the intermittent flows provide habitats for the continuation of the aquatic*

21 Proposed Plan definition and as the same meaning as in section 2 of the RMA

22 Regulation 3 – Interpretation of the NES-CF

system” in the NES-CF definition. This effectively narrows the application of the regional setbacks from perennial rivers in the NES-CF to protecting those that provide aquatic habitats, meaning that equivalent setbacks in NATC-R1 are likely to be broader in their application and therefore more stringent than the NES-CF.

- 68 Mr Wells, at paragraph 60 of his evidence, considers that relying on the Proposed Plan definition of ‘river’ has an increased risk of the NATC-R1 and NATC-R3 setbacks being applied to ephemeral streams. This is not a risk under the NES-CF definition of perennial river due to the use of the term ‘perennial’ in the title and the aquatic habitat requirement, both of which do not apply to ephemeral streams. Mr Wells notes at paragraph 60 of his evidence, if setbacks were also applied to ephemeral streams (such as small gullies or swales that only contain water after rain events), there would be a significant negative impact on the way Port Blakely conducts their forestry operations, as well as overly onerous consenting requirements.

Section 42A analysis and recommendations

- 69 I have reviewed the sections of the section 42A report that respond to the Port Blakely’s primary submission on the NATC chapter, specifically:
- (a) Paragraphs 8.6.16, 8.6.17 and 8.9.10 in relation to NATC-R1
 - (b) Paragraphs 8.11.26 to 8.11.28 in relation to NATC-R3
- 70 With respect to NATC-R1, I understand that this rule has now been merged with ECO-R1.2 to avoid duplication of indigenous vegetation clearance rules. I agree that this is a more efficient drafting approach and it avoids duplication between NATC-R1 and ECO-R1.2. As the reporting officer has already recommended the insertion of an advice note in ECO-R1.2 stating that the rule does not apply to the clearance of indigenous vegetation associated with a commercial forestry activity regulated under the NES-CF, I consider that this effectively addresses the concerns that Port Blakely had with the drafting of NATC-R1.
- 71 With respect to NATC-R3, I agree with the reporting officer’s recommendation to include the same advice note in both NATC-R3.1 and NATC-R3.2 as is recommended for ECO-R1. My support for the advice note

approach is for the same reasons as set out in paragraphs 45-46 of my evidence above.

- 72 I do note an inconsistency with respect to the advice note applied to NATC-R3.2 (earthworks in the riparian margins of a HNWB) and the equivalent indigenous vegetation clearance rule (now ECO-R1.3, moved from NATC-1), where there is no advice note applied. I consider that it appropriate that commercial forestry activities regulated by the NES-CF should be exempt from complying with rules for both earthworks and indigenous vegetation clearance in the riparian margins of a HNWB. The reporting officer has not justified or explained in the section 42A report the reason for this inconsistency or why they consider that more stringency is required for indigenous vegetation clearance in the riparian margins of a HNWB for commercial forestry but is not required for the equivalent earthworks rule.

Recommended amendments

- 73 I recommend that the amendments made by the reporting officer to merge NATC-1 with ECO-R1.2 and to amend NATC-R3 are accepted with respect to inclusion of the new advice notes relating to the NES-CF, for the reasons I have outlined above.
- 74 I recommend that the same advice note relating to commercial forestry be inserted into to ECO-R1.3 relating to indigenous vegetation clearance in the riparian margin of a HNWB, to match the advice note in the equivalent earthworks rule in NATC-R3.

NATURAL FEATURES AND LANDSCAPES

NFL-R7.1

Assessment of how the rule is more stringent than the NES-CF and potential impact on plantation forestry

Overview of NFL-R7.1

- 75 NFL-R7.1 in the Proposed Plan is a controlled activity rule that manages afforestation in Visual Amenity Landscapes (**VAL**), which are mapped as an overlay in the Proposed Plan. There are three matters of control listed for afforestation in a VAL that limit Council's control to the effects on visual amenity landscape values of the VAL, the location and extent of the afforestation and any mitigation measures. There are no controlled

conditions to comply with under NFL-R7.1, so the activity status remains controlled regardless of the nature or location of the afforestation or the potential visual amenity effects on the VAL.

Comparison of stringency – NFL-R7.1

- 76 The NES-CF allows for territorial authorities to restrict afforestation in VAL under Regulation 13. Where a territorial authority has introduced a rule (such as NFL-R7.1) that restricts afforestation within a VAL, the activity status of the afforestation is controlled under Regulation 15(3). Control is reserved over the effects on the visual amenity values of the visual amenity landscape, including any future effects from commercial forestry activities under Regulation 15(4).
- 77 NFL-R7.1 and Regulations 13 and 15 of the NES-CF are relatively well aligned, in my opinion, in that the activity status of controlled is consistent in both. However, I consider that the matters over which control are reserved in NFL-R7.1 are broader than the matter listed in Regulation 15(4), particularly with respect to controlling the location and extent of the afforestation (NFL-R7.1.2) and therefore potentially more stringent in terms of the conditions that may be imposed.

Section 42A analysis and recommendations

- 78 I have reviewed the sections of the section 42A report that respond to the Port Blakely's primary submission on the NLF chapter, specifically paragraphs 9.1.13, 9.13.8 and 9.13.11 in relation to NFL-R7.1.
- 79 I agree with the reporting officer that it is appropriate to amend the first matter of control to broadly align with Regulation 15(4) of the NES-CF and to delete the other two matters that do not align with Regulation 15(4). I agree that the retention of the reference to SCHED-10 in the matter of control is appropriate as, while not strictly aligning with Regulation 15(4), it contains a clear reference to where the VAL are scheduled in the Proposed Plan and spatially links the matter of control to consideration of visual amenity effects on these areas only.

Recommended amendments

- 80 I recommend that the amendments made by the reporting officer to NFL-R7.1 are accepted for the reasons I have outlined above.

CONCLUSION

- 81 I consider that the recommendations made by the reporting officer in the section 42A report are largely appropriate and represent an efficient way of aligning the ECO, NATC and NFL chapters with the NES-CF. The use of advice notes ensures that the provisions of the Proposed Plan do not duplicate the NES-CF regulations or introduce additional, unjustified stringency that undermines the NES-CF with respect to achieving nationally consistent regulation of commercial forestry.
- 82 My only additional recommendation is to ensure that advice notes relating to exempting commercial forestry activities regulated under the NES-CF are applied consistently to all relevant rules in the ECO and NATC chapters, which includes ECO-R1.3 relating to indigenous vegetation clearance in the riparian margins of HNWB. In my opinion, this rule should also have an advice note to match the equivalent earthworks rule in NATC-R3.2.
- 83 Thank you for the opportunity to present my evidence.

Melissa Pearson
25 October 2024

Appendix 1 – Consideration of Regulation 6 of the NES-CF and section 32(4) requirements relevant to the ECO and NATC chapters of the Timaru Proposed District Plan

Consideration of Regulation 6 of the NES-CF and section 32 requirements for the ECO chapter

- 1 The section 32 report for Ecosystems and Indigenous Biodiversity²³ makes two mentions of the NES-PF (being the title of the NES-CF in May 2022 when the report was prepared):
 - (a) Section 1.2 responds to the draft district plan feedback seeking clarification as to how the NES-PF relates to the Ecosystems and Indigenous Biodiversity provisions by stating:

"The NESPF manages activities associated with plantation forestry, including planting. The rules in the District Plan can only be more stringent than the NESPF in those circumstances set out in the NESPF. In relation to indigenous biodiversity, this includes rules that recognise and provide for the protection of significant natural areas. The rules have been amended to ensure that in relation to forestry species, the rules [sic] are targeted [sic] to such areas."
 - (b) Section 1.5.3 states that *"The NES-PF enables more stringent controls over forestry activity where it impacts on an identified SNA; but does not allow more stringent controls in relation to the maintenance of indigenous biodiversity more broadly"*.
- 2 The section 32 report also states that the feedback from public consultation was that plantation forestry can have adverse impacts on biodiversity values, including wilding species (Section 1.2) and the *"need to manage tree planting in high natural areas and SNAs, especially methods to manage plant species prone to wilding spread to avoid impacts on ecosystems and indigenous biodiversity"* was identified as a key issue for the chapter (Section 1.4.2).
- 3 From my reading of the section 32 report, I make the following observations:
 - (a) The report does not identify that any part of the Ecosystems and Indigenous Biodiversity chapter is relying on Regulation 6(2)(b)²⁴ as justification for being more stringent than the NES-CF with respect to SNAs;
 - (b) The report does not identify which rules in the Ecosystems and Indigenous Biodiversity chapter are intended to be more stringent

²³ Ecosystems and Indigenous Biodiversity section 32 report for the Timaru PDP (May 2022)

²⁴ Regulation 6(2)(b) - *"A rule in a plan may be more stringent than these regulations if the rule recognises and provides for the protection of...significant natural areas."*

- than the NES-CF, nor does it clarify which rules the NES-CF prevails over to avoid confusion for plan users;
- (c) There is no consideration of the requirements of section 32(4) of the RMA to demonstrate the Timaru specific circumstances that justify a rule being more stringent to protect SNAs;
 - (d) There is no analysis of why ECO-R1 is more efficient and effective at protecting SNAs compared to Regulations 93 and 94; and
 - (e) As the section 32 report is clear that the NES-CF "*does not allow more stringent controls in relation to the maintenance of indigenous biodiversity more broadly*"²⁵, it is unclear what justification is being relied upon for the more stringent rules in ECO-R1(2) as these fall outside the scope of Regulation 6(2)(b) and are not for the purpose of protecting SNAs.
- 4 To further compound the confusion for plan users, ECO-R1 is silent on whether it is intended (in part or in full) to be more stringent than Regulations 93 and 94 of the NES-CF and therefore prevail in the event of a conflict.
- 5 In my opinion, the general comments in the section 32 report concerning plan rules being able to be more stringent than the NES-CF when protecting SNAs is not sufficient to meet the required tests of section 32(4). Those generic statements merely acknowledge the **potential** for SNA rules to be more stringent than the NES-CF – that is not, in of itself, a justification for that additional stringency. No evidence has been provided that any part of ECO-R1(1) is necessary to protect SNAs in the Timaru district from the adverse effects associated with forestry activities and why Regulations 93 and 94 do not already provide sufficient protection. Regulation 93 is already relatively stringent with respect to indigenous vegetation clearance in SNAs, with all clearance requiring a restricted discretionary activity consent except for limited forestry track clearance and incidental damage.
- 6 With respect to ECO-R1(2), I consider that there is no jurisdiction for district plan rules to be more stringent than the NES-CF with respect to managing

²⁵ Section 1.5.3 of the Ecosystems and Indigenous Biodiversity section 32 report for the Timaru PDP (May 2022).

indigenous biodiversity in areas outside of SNAs, as already acknowledged in the section 32 report.²⁶

- 7 Other significant omissions, in my opinion, from the Ecosystems and Indigenous Biodiversity section 32 report relate to:
 - (a) The identification of reasonably practicable options as required under section 32(1)(b)(i) of the RMA; and
 - (b) Consideration of the efficiency and effectiveness of the provisions in achieving the objectives under section 32(1)(b)(ii) of the RMA.
- 8 The identification of options in Section 4 of the section 32 report is undertaken at a chapter level and there is no options assessment for any specific provisions, or even groups of provisions. As such, there has been no consideration of relying on the NES-CF to manage adverse effects associated with commercial forestry as an option.
- 9 In my opinion, the NES-CF 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 commercial forestry in addition to the NES-CF and the NES-CF on its own should certainly not be omitted as a reasonably practicable option.
- 10 With respect to the efficiency and effectiveness of introducing the more stringent ECO-R1 to manage effects of commercial forestry on indigenous biodiversity, compared to relying on the NES-CF regulations, the section 32 report is silent. There is also no consideration of the environmental, economic, social and cultural benefits and costs associated with ECO-R1 compared to NES-CF regulations. More specifically, I consider that the section 32 report does not consider:
 - (a) The adequacy of the NES-CF to manage the effects of commercial forestry within the Timaru District. This point is particularly important as the NES-CF has been in force in some form since 2017 so there should be some clear analysis and evidence to demonstrate why more stringent controls than the NES-CF are necessary specifically to

²⁶ Ibid.

manage SNAs in Timaru. My understanding (based on the evidence of Mr Barry Wells²⁷) is that the effectiveness of the NES-CF compared to the proposed wording of ECO-R1 was not discussed with forestry companies in the district prior to the Proposed Plan being notified and there has been no monitoring or inspections completed of the Port Blakely forests to understand if the additional stringency is warranted.²⁸

- (b) District specific factors and values that may justify more stringent rules (for example, SNAs particularly sensitive to the effects of commercial forestry activities).
- (c) The economic costs to foresters associated with the more stringent ECO-R1. This is discussed in the evidence of Mr Wells²⁹ with specific reference to the potential uncertainty and costs that may result from ECO-R1.

- 11 In my opinion, the lack of consideration of these factors in the Ecosystems and Indigenous Biodiversity section 32 report is inconsistent with good planning practice and arguably fails to meet the requirements of sections 32(1)(b) and (4) of the RMA.
- 12 An additional factor (that would not have been considered at the time the Ecosystems and Indigenous Biodiversity section 32 report was drafted) is the stronger provisions introduced through the replacement NES-CF to manage the risk of wilding conifers, as described in paragraphs 19(b) and (c) of my evidence. My understanding is that the risks to indigenous biodiversity from wilding pines was one of the key issues with plantation forestry raised in the s32 report (Section 1.4.2). As the NES-CF regulations are now strengthened in this regard, I consider that there is an even weaker case for additional stringency on the grounds of managing adverse effects on indigenous biodiversity from wilding pine spread.

²⁷ Paragraphs 56 of Mr Wells' evidence

²⁸ Paragraph 55 of Mr Wells' evidence

²⁹ Paragraph 59 of Mr Wells' evidence.

Consideration of Regulation 6 of the NES-CF and section 32(4) requirements for the NATC chapter

- 13 The section 32 report for Natural Character³⁰ considers plantation forestry³¹ in respect of the natural character provisions in two sections as follows:
- (a) Section 1.4.3 undertook a comparison of provisions in other district plans that showed that there were a variety of approaches to managing forestry in relation to riparian margins, including preventing afforestation and managing run off from harvesting activities near waterbodies (Waimate), managing forestry in riparian margins (Mackenzie), no specific forestry controls in riparian margins in either Ashburton or Selwyn and only managing forestry in natural character areas in the coastal environment in Christchurch.
 - (b) Section 1.5.3 states that *"Of relevance to the natural character of rivers, streams and wetlands, the NPS-PF includes regulations that specify setbacks from perennial rivers, wetlands and lakes greater than 0.25ha; outstanding freshwater bodies; and water bodies subject to a water conservation order for activities such as earthworks. However, there are no limitations in respect of natural character or riparian values in the NESPF beyond the specific regulations that apply generally in the NES-PF in respect of pruning and thinning to waste."*
- 14 From my reading of the section 32 report, I make the following observations:
- (a) The report does not identify that any part of the Natural Character chapter is relying on Regulation 6 as justification for being more stringent than the NES-CF with respect to vegetation clearance or earthworks. In my opinion, there is no scope under Regulation 6 for district plan provisions to be more stringent than the NES-CF to manage natural character³²;

³⁰ Natural Character section 32 report for the Timaru PDP (May 2022)

³¹ The term used based on the previous NES-PF that was in force at the time the section 32 report was prepared.

³² Except with respect to the natural character of the coastal environment under Policy 13 of the New Zealand Coastal Policy Statement (Regulation 6(1)(b) – this is the only circumstance where, in my view, a territorial authority could make a case for a plan rule being more stringent than the NES-CF with respect to managing natural character.

- (b) The report does not identify which rules in the Natural Character chapter are intended to be more stringent than the NES-CF, nor does it clarify which rules the NES-CF prevails over to avoid confusion for plan users;
 - (c) There is no consideration of the requirements of section 32(4) of the RMA to demonstrate the Timaru specific circumstances that justify a rule being more stringent to manage the natural character of riparian margins (if the position of the section 32 report author was that there was a Regulation 6 justification for the additional stringency);
 - (d) There is no analysis of why NATC-R1 is more efficient and effective at managing vegetation clearance compared to Regulations 93, 94 and 95, or at managing earthworks compared to Regulations 23 and 29; and
 - (e) It is unclear what the section 32 report author means in respect of their comment in Section 1.5.3 about the relevance of the pruning and thinning to waste regulations in subpart 2 of the NES-CF and there being "*no limitations in respect of natural character or riparian values in the NESPF*".
- 15 I have assumed from reading Section 1.5.3 of the section 32 report that the author may be relying on section 43A(5)(b) of the RMA in terms of the Proposed Plan being able to manage the adverse natural character effects of vegetation clearance and earthworks on the basis that these effects are different to the adverse effects managed by the NES-CF.
- 16 Section 43A(5) of the RMA states (my emphasis added in **bold**):
- (5) If a national environmental standard allows an activity and states that a resource consent is not required for the activity, or states that an activity is a permitted activity, the following provisions apply to plans and proposed plans:*
- (a) a plan or proposed plan may state that the activity is a permitted activity on the terms or conditions specified in the plan; and*
 - (b) the terms or conditions specified in the plan may deal only with effects of the activity that are different from those dealt with in the terms or conditions specified in the standard; and***
 - (c) if a plan's terms or conditions deal with effects of the activity that are the same as those dealt with in the terms or conditions specified in the standard, the terms or conditions in the standard prevail.*
- 17 My understanding of this section of the RMA is that it is intended to allow local authorities to control the adverse effects of particular activities when

those effects are not managed by a NES. In the case of commercial forestry activities under the NES-CF, natural character is not a value mentioned explicitly in any of the regulations. The term 'riparian zone' is used in multiple regional jurisdiction regulations and is defined as:

"means that margin and bank of a water body, including the area where direct interaction occurs between land and water systems, that is important for the management of water quality and ecological values"

- 18 Although the NES-CF does not explicitly say that any regulation is for the purpose of managing natural character or riparian values, the vegetation clearance and earthworks activities that NATC-R1 and NATC-R3 respectively propose to manage are already managed by NES-CF regulations at both a district and regional level (as set out in paragraphs 58-63 of my evidence). The mechanism to manage vegetation clearance and earthworks adjacent to perennial rivers, being setbacks, is the same mechanism under both the NES-CF and NATC-R1/NATC-R3, albeit at different distances and under different jurisdictions.
- 19 In my opinion, the fact that managing adverse effects on natural character is not explicitly mentioned in the NES-CF does not mean that a local authority can solely rely on section 43A(5)(b) to introduce provisions that are more stringent than equivalent activity rules in the NES-CF. Similar to Regulation 6 matters, section 43A(5)(b) only provides the **opportunity** for a local authority to introduce more stringent rules on the basis that they are designed to control different adverse effects than the NES-CF controls. However, section 43A(5)(b) does not absolve a local authority from the need to:
- (a) Identify reasonably practicable options to manage adverse effects on natural character, as required under section 32(1)(b)(i) of the RMA; and
 - (b) Consider the efficiency and effectiveness of the provisions in achieving the objectives under section 32(1)(b)(ii) of the RMA.
- 20 The NES-CF already manages both indigenous and non-indigenous vegetation clearance associated with commercial forestry activities in all locations (including by default riparian margins). Similarly, the NES-CF already manages earthworks through both district and regional regulations, including the use of setbacks from perennial rivers. As such, it is my opinion that relying on the NES-CF provisions to manage natural character effects in riparian

margins should have been considered as a potential option in the section 32 report. I consider that relying on the combination of territorial regulations for vegetation clearance (Regulations 93, 94 and 95), regional regulation setbacks for earthworks from perennial rivers (Regulation 29) and regional regulations imposing setbacks from perennial rivers for all major forestry activities (as set out in paragraph 63 above) would be both an efficient and effective way to manage natural character effects resulting from commercial forestry activities.

- 21 To reiterate the point I made previously, the NES-CF should be the starting point for forestry rules across New Zealand and any deviation from the regulations, including any proposal to manage additional adverse effects under section 43A(5)(b) of the RMA, requires a proportionate section 32 evaluation to demonstrate the appropriateness of those additional restrictions. As stated in paragraph 13 of my evidence, achieving consistent management of commercial forestry activities was a key reason why the NES-CF was introduced, so the introduction of any new district plan rules in addition to the NES-CF regulations risks undermining the effectiveness of the NES-CF in achieving those consistency and efficiency goals for the forestry industry.
- 22 In my opinion, the section 32 evaluation should have demonstrated why the combination of controls on vegetation clearance and earthworks in the NES-CF (both regional and district), including the use of regional setbacks from perennial rivers for all the major commercial forestry activities, were inadequate to manage natural character effects on riparian margins in the Timaru district. The section 32 evaluation should also have considered:
- (a) The adequacy of the NES-CF to manage the effects of commercial forestry within the Timaru District. As discussed in relation to the ECO rules above, I would have expected some clear analysis and evidence to demonstrate why more stringent controls than the NES-CF are necessary in the Natural Character chapter specifically to manage vegetation clearance and earthworks in riparian margins in Timaru.
 - (b) The efficiency and effectiveness of imposing NATC-R1 and NATC-R3 on commercial forestry activities in addition to the vegetation clearance and earthworks regulations and perennial river setback regulations already in the NES-CF, particularly when the introduction

of these rules will likely result in the need to obtain both district and regional consents for the same activity, with associated duplication of time and resources.

- (c) Consideration of the environmental, economic, social and cultural benefits and costs associated with NATC-R1 and NATC-R3 compared to relying on the NES-CF vegetation clearance, earthworks and perennial river setback regulations.
 - (d) The economic costs to foresters associated having to comply with NATC-R1 and NATC-R3 as well as the NES-CF regulations. This is discussed in the evidence of Mr Wells³³ with specific reference to the potential uncertainty and costs that may result from NATC-R1 and NATC-R3.
- 23 In my opinion, the lack of consideration of these factors in the Natural Character section 32 report is inconsistent with good planning practice and arguably fails to meet the requirements of section 32(1)(b) of the RMA.

³³ Paragraphs 64-67 of Mr Wells' evidence.