

**BEFORE THE INDEPENDENT HEARINGS PANELS APPOINTED TO HEAR AND MAKE  
RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS ON PROPOSED PLAN  
CHANGE 1 TO THE NATURAL RESOURCES PLAN FOR THE WELLINGTON REGION**

**UNDER** the Resource Management Act 1991 (the  
Act)

**AND**

**IN THE MATTER** of Hearing of Submissions and Further  
Submissions on Proposed Plan Change 1 to  
the Natural Resources Plan for the  
Wellington Region under Schedule 1 of the  
Act

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**REPORTING OFFICER RIGHT OF REPLY OF SHANNON JOHN  
WATSON**

**ON BEHALF OF GREATER WELLINGTON REGIONAL COUNCIL**

**HEARING STREAM 3 – FORESTRY AND VEGETATION CLEARANCE**

**2 JULY 2025**

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## **INTRODUCTION**

- 1 My full name is Shannon Watson. I am a Technical Lead – Planning at GHD Limited.
- 2 I have prepared this reply in respect of the matters raised during the hearing of matters in Hearing Stream 3 – Forestry and Vegetation Clearance.
- 3 I listened to submitters in Hearing Stream 3, read their evidence and tabled statements, and have reviewed the written submissions and further submissions relevant to this topic.

## **QUALIFICATIONS AND EXPERIENCE**

- 4 My qualifications and experience are set out in paragraphs 15-17 of my section 42A report for this topic, dated 15 April 2025. I repeat the confirmation given in that report that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

## **SCOPE OF REPLY**

- 5 This reply follows Hearing Stream 3 of Plan Change 1 to the Natural Resources Plan for the Wellington Region (PC1) held on 26 May 2025 to 29 May 2025.
- 6 This Reply covers:
  - 6.1 Responses to questions raised directly by the Panels in Minute 12 as relevant to the Forestry and Vegetation Clearance topic; and
  - 6.2 Responses to matters raised by the Panel and submitters during the hearing.
- 7 This Reply includes:
  - 7.1 Appendix 1, containing updated provisions with s32AA assessment as signalled in rebuttal evidence and reference to submissions recommended amendments respond to
  - 7.2 Appendix 2 which includes an assessment of the alternative options available in terms of activity status in table format
  - 7.3 Appendix 3 which includes an example of a potential permitted activity rule framework; and
  - 7.4 Appendix 4 which includes amendments to the definition of highly erodible land, Policy CC.6 and Method CC.4 of RPS Change 1 agreed during mediation on 17 June 2025.

## RESPONSES TO MINUTE 12

8 Minute 12 requested that the section 42A report author submit a written Right of Reply in response to matters raised in the Minute.

9 At paragraph 1 of Minute 12 the Panel requested:

*1. Council Reporting Officers please include the relevant references to submitter relief with their Reply tracked changes to the provisions. Submission points can be identified through footnotes or similar.*

10 I have included footnotes where recommended amendments are explicitly linked with the relief sought in a submission or submitter evidence. However, in many instances, there is no clean 'line of sight' between recommended amendments and a specific submission point. This is particularly the case for forestry provisions, notably some clauses in Policies WH.P28 and P.P26 and the recommended forestry management plan framework (including the definition of forestry management plan), where recommended amendments are not specifically sought by submitters but are within the scope of submissions on these provisions in PC1, which range from seeking deletion of PC1 in its entirety (e.g. Southern North Island Wood Council, NZCF) to retaining forestry provisions in PC1 as notified (e.g. Taranaki Whānui) or making notified provisions more restrictive (e.g. Forest & Bird, EDS). As all provisions where amendments do not have corresponding footnotes are subject to the FPP, where the Panel is not bound by the scope of submissions; in this regard, I confirm my recommended amendments are within the scope of PC1 as notified. Likewise, I confirm any changes to P1S1 provisions are either Clause 16 amendments or are within the scope of the submission point identified in the corresponding footnote.

11 At Paragraph 2 of Minute 12 the Panel requested further information from the Council's technical experts as to:

*2. How often monitoring data will be used to assess whether TAS is met for a part FMU, e.g. for Rules WH.R20 and P.R19. Or alternatively, whether Council considers the TAS should be measured against the PC1 Baseline state or a different benchmark.*

12 Concern about implementation of TAS and how this affects provisions in PC1, including forestry rules, is acknowledged. As discussed in rebuttal evidence and during the hearing, Council will consider their approach to implementation of the TAS and will provide further clarification during future hearing streams. For the purposes of this Right of Reply, the

implementation approach for the forestry rules WH.R20 and P.R19 which are influenced by the approach to implementation of the TAS (i.e. PC1 rules only apply where TAS are not met), presented in rebuttal evidence and discussed during the hearing has been carried through into recommended amendments in Appendix 1.

### **Requests from the Panel related to Rules WH.R20 And P.R19**

13 At Paragraphs 10 and 11 of Minute 12 the Panel requested:

*10. Further information on alternatives to restricted discretionary activity status in WH.R20 and P.R19, including the advantages and disadvantages of permitted, controlled and restricted discretionary activity status.*

*11. Further information on:*

- a) the implications of WH.R20 and P.R19 containing a restrictive set of permitted activity standards,*
- b) whether these standards could allow for enforcement officers to provide feedback to forestry operators with regulatory implications if operators did not incorporate the feedback, and*
- c) whether permitted activity standards could allow for a council certification process.*

14 I respond to these requests below and in Appendices 2 and 3 of this Right of Reply, respectively.

### **Question 10**

15 In response to Question 10, I have assessed the potential activity status options listed and the advantages and disadvantages associated with each of the options in table format in Appendix 2.

### **Question 11(a)**

16 In response to Question 11(a), I have drafted a potential permitted activity rule which attempts to respond to the more significant limitations of the NES-CF identified by Mr Reardon and Mr Pepperell in their technical evidence and which builds on the suggestions of Ms Strang on behalf of NZFAA (the Horizons approach) and that of Mr Hansen and Mr Rillstone on behalf of Guildford Timber, Silverstream Forest and Goodwin Estate. This permitted activity rule and some commentary about the rationale for the example

standards and their limitations can be seen in Appendix 3. The proposed example includes a certification approach for the forestry management plan. The limitations of this approach are described further in response to Question 11(c) below.

- 17 The Horizons approach<sup>1</sup>, or a similar approach to the Horizons approach where more restrictive permitted activity standards than the NES-CF are applied, has been raised as an option by submitters. In my opinion, while this may be a minor improvement on the NES-CF on its own, this approach does not include any certification or approval ability for Council related to management plans and the measures included in management plans. As such, the Horizons approach has the same limitations as the current NES-CF regime and would only go some of the way to addressing concerns about Council's ability to manage potential adverse effects.
- 18 Based on discussion with Mr Reardon and Mr Pepperell, I understand it would be very difficult to construct a permitted activity standard which prescribes specific requirements for the sorts of considerations that apply in the forestry context (e.g. permitted standards requiring a specific harvest method based on specific land classifications) as there would be multiple conflicting factors (e.g. topography, access, proximity to infrastructure, sensitivity of adjacent receiving environments, erosion risk of affected or adjacent land, cost etc) which might limit the options available to a landowner or forest manager.
- 19 My example permitted activity rule would require amendments to the forestry management plan definition, new explanatory notes and new definitions to support implementation, alongside a more restrictive rule that would apply where permitted activity standards cannot be met. Examples of these amendments are also shown in Appendix 3. The provisions in Appendix 3 differ from those in Appendix 1 and are provided as an *example* rather than a *recommendation* and have been provided without any tracked changes, so they are easier to read. A permitted activity rule outside of the NES-CF may also have other implications in terms of the ability for Council to recoup costs of any certification process and reviewing compliance with permitted activity standards.
- 20 The example permitted activity rule in Appendix 3 includes a 10m setback for all listed forestry activities in PC1. I have adopted the 10m setback based on the rebuttal evidence from Dr Greer in Hearing Stream 2<sup>2</sup> where he cites literature which concludes a 10m set

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<sup>1</sup> Refer RF-Land-R3 and RF-Land-R8 and the definition of 'operational plan' in the Horizons One Plan <https://www.horizons.govt.nz/CMSPages/GetFile.aspx?guid=61e71b7b-2054-4a92-8704-9d5e20f0f67d>

<sup>2</sup> Paragraph 42 of Dr Greer's rebuttal evidence [HS2-GWRC-Statement-of-Rebuttal-Evidence-Dr-Michael-Greer.pdf](https://www.horizons.govt.nz/CMSPages/GetFile.aspx?guid=61e71b7b-2054-4a92-8704-9d5e20f0f67d)

back removes more than 80% of sediment from overland flow while simultaneously increasing bank stability. Outside of some observational evidence from Mr Reardon regarding suitable revegetation or replanting timeframes for different land classifications and this literature-based evidence of Dr Greer, no other technical evidence has been provided to support any specific limits or restrictions that may be prescribed as permitted activity standards. The overriding principle is that any standards more restrictive than the NES-CF could be expected to achieve better outcomes for water quality.

**Question 11(b)**

- 21 In response to Question 11(b), having discussed with Ms Anderson, Counsel for the Council, I am unclear how a permitted activity standard that requires a resource user to incorporate advice or feedback provided by Council, and if not (presumably) a need to apply for resource consent would prevail, might work in practice. Ms Anderson noted her concern with a feedback loop or mechanism as part of a permitted activity standard and needing to write a feedback process and/or a process to follow when there is disagreement on the feedback provided into a standard and notes this is probably why the NES-CF is drafted the way it is. However, regulatory implications of ignoring any feedback provided as part of a certification process might work in the sense that approval for the activity to proceed as a permitted activity could be withheld until matters of concern to Council were addressed or a resource consent would be required. The practicalities of a certification process are discussed in further detail below.

**Question 11(c)**

- 22 In response to Question 11(c), while permitted activity standards *could* allow for a Council certification process, certification as a permitted activity standard needs to contain a level of certainty for both Council and a plan user that specific criteria, standards or limits are met.
- 23 In addition to the Horizons approach described in paragraphs 16 and 17, e.g. NZFFA Wellington suggested prescribing specific standards to be met and auditing against these standards, with reference to the NZFOA Forest Practice Guides and Road Engineering Manual. I view this as a certification-based approach. This approach also has its limitations because the documents considered 'best practice', being the NZFOA Road Engineering Manual and Forest Practice Guides, and Council's own Erosion and Sediment Control

Guidelines<sup>3</sup>, are guidelines, containing a ‘toolbox’ of potential management measures and ‘typical’ design standards<sup>4</sup>. If a certification process related to adherence to these guidelines was adopted, the appropriateness of the use of any of those management measures in any specific context will not be able to be scrutinised as part of a ‘certification’ process. Most importantly, regardless of whether (or not) a landowner or forest manager implements management measures (e.g. erosion and sediment controls) consistent with the relevant guidelines, one of the key concerns raised by Mr Reardon is the appropriateness of the earthworks and harvest method adopted for any specific block, which influences the location, severity and ultimately effects on water quality from land disturbance. At the simplest level, as an example to assist the Panel, certification that erosion and sediment controls are consistent with NZFOA Forest Practice Guides or Council’s ESC Guidelines will still not enable scrutiny of whether an earthworks or harvest methodology is the most appropriate or whether a particular skid site or landing is in the most appropriate location or whether there are alternative options which have lesser effects.

- 24 An option could be to prescribe specific criteria that Council (or an independent party) undertakes certification against. Some potential criteria are listed in the example permitted activity rule in Appendix 3. However, in my opinion, this would still have its limitations because I consider there would still be an element of discretion that needs to be applied in terms of what may or may not be appropriate in the context of any specific site or activity. The certifier would be required to confirm the earthworks and harvest methodology (including potential effects of future earthworks and harvest in the case of afforestation or replanting) is suitable for the terrain and the location of forestry infrastructure and proposed erosion and sediment control measures are appropriately designed and located. I understand from Mr Pepperell that it will take time for Council to develop the experience and technical knowledge needed to undertake this certification process internally and that Council would still need to rely on consultants for more complex sites. As this approach would fall outside of permitted activity monitoring under the NES-CF, Council would also need to establish a process for recouping any costs incurred during the certification process. However, it is likely the costs for forest managers and landowners would be similar to those able to be on-charged as part of permitted

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<sup>3</sup> Noting these guidelines do not have any specific section on forestry activities or erosion and sediment control activities that should apply to the forestry context

<sup>4</sup> Noting not all activities covered by the NZFOA Forest Practice Guides have specific design criteria or standards associated with them

activity monitoring (review of NES-CF management plans) under the NES-CF currently and, in my opinion, this is not a significant barrier to implementation.

25 Any Council certification process is also likely to have challenges in terms of differences in opinion about what might or might not be appropriate (or feasible) in the context of any specific site. One way to resolve this potential conflict could be to have an independent certifier, similar to that for Farm Environment Plans, where a suitably qualified and experienced external (independent) party certifies the forestry management plan meets prescribed criteria before the management plan is submitted as part of a permitted activity standard. Council's discretion would then be limited to checking whether (or not) the proposed activity met the other permitted activity standards (setbacks, stabilisation or replanting timeframes) and that the forestry management plan had been certified by an approved person. Council would need to develop the process and supporting framework to support such an approach and identify a list of parties that Council is satisfied are independent and have the experience or qualifications to provide the necessary certification. This approach could be viewed as similar to the approach in PC1 as notified<sup>5</sup>.

26 In my opinion, given the site and context specific variables that apply to forestry, there is no silver-bullet related to obtaining certainty about the ability to appropriately manage effects on water quality as part of a permitted activity standard and I remain of the view a restricted discretionary activity status is the most appropriate response for the following reasons:

26.1 The inability to decline a consent application through permitted and controlled activity status would not support the direction of travel of RPS Change 1<sup>6</sup> or right tree right place under national climate change direction

26.2 There is limited technical evidence and the observational evidence related to the performance of the NES-CF in these Whaitua is limited mainly to one Whaitua (TAoP). As a result, there is an information gap in terms of the specific permitted activity regulations of the NES-CF that PC1 might need to be more stringent to better manage adverse effects on water quality.

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<sup>5</sup> PC1 as notified via Rules WH.R20 and P.R19 and Schedule 34 required both a certification step by a registered forestry advisor and then a secondary certification or approval process as part of a controlled activity consent. The legislation referred to in the definition of registered forestry advisor has been repealed since PC1 was notified and I considered a certification process before consideration as part of a consent application was unnecessary and recommended deletion of both the definition of registered forestry advisor and Schedule 34 in my s42A report

<sup>6</sup> I understand that an agreed position on the wording of Policy CC.6 and 'highly erodible land' in RPS Change 1 has been reached (refer Appendix 4 and paragraphs 67-69 of this Right of Reply statement)

- 27 For the above reasons, to give effect to the NPS-FM, I consider more holistic consideration of the potential effects of forestry activities as part of a restricted discretionary activity consent, where Council retains an ability to decline consent, is the most appropriate response where suspended fine sediment TAS are not met. Regardless of the regulatory regime adopted in future, effective monitoring and enforcement is critical to achieving the positive environmental outcomes sought through improved management of forestry in these Whaitua.
- 28 My understanding from the hearing is that the main concern from submitters regarding a consenting process is cost. I acknowledge this concern, however based on discussions with Mr Reardon, I consider concerns about costs are over-stated. If landowners and forest managers are undertaking good/best practice earthworks and harvest planning, costs under the NES-CF and PC1 subject to my recommended amendments are not expected to be materially different. Initially, there is the potential for consenting costs to be higher than may ordinarily be expected, while Council develops their approach to implementation of recommended amendments. However, in time as the benefits of recommended Method M44A are realised, those costs will likely come down. Council could further minimise the potential for high consenting costs through progressing some the actions proposed in Method M44A prior to PC1 rules coming into effect, specifically providing education around what good/best practice looks like and making their expectations around information requirements (both under PC1 as recommended but also under the NES-CF) clear to the sector. In addition to minimising costs, this would encourage a positive working relationship with the forestry sector and alleviate some of the concerns about uncertain information requirements and the broadness of Council discretion, in the event a consenting requirement ends up being prescribed in PC1.
- 29 In addition to the ability for applicants to 'bundle' consents and simplify consent application forms described in my rebuttal evidence, Council also has other ways to minimise costs through implementation, for example by having lower application costs for lower risk or smaller scale forestry activities<sup>7</sup>. A similar approach in terms of scaling of costs based on the scale or complexity of the activity is applied to other activities as can be seen in Council's Fees and Charges<sup>8</sup>. Council also offers one hour of free pre-application advice that landowners and forest managers could take advantage of to

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<sup>7</sup> Council have confirmed this is something they are happy to adopt and will provide further guidance as to what appropriate lower risk or smaller activities might be

<sup>8</sup> <https://www.gw.govt.nz/your-region/resource-consents/fees-and-charges/>

understand any potential consenting risks and information requirements/expectations and how best to present or communicate the required information, prior to progressing with development of management plans and resource consent applications.

### **RESPONSES TO POINTS RAISED DURING HEARING STREAM 3**

30 Responses to additional queries raised by the Panel during the hearing are outlined below.

#### **Terminology for renewable energy activities in WH.R18 and P.R17 and s107 tests in vegetation clearance rules**

31 During the hearing, Commissioner McGarry queried whether the terminology for renewable energy generation used in WH.R18 and P.R17 accurately reflects the defined term and whether the RMA s107 tests are correctly reflected in the permitted vegetation clearance rules (WH.R17 and P.R16).

32 I noted during the hearing that any errors in WH.R18 or P.R17 would be a result of errors in Rule R106 of the operative NRP as I simply carried over the wording in the operative NRP into PC1. Commissioner McGarry is correct in that reference to 'renewable energy generation' is not a defined term in the NRP and the correct terminology should be 'renewable energy generation activities'. I therefore recommend that Rules WH.R18 and P.R17 be amended as changes under Clause 16 of the RMA to reflect 'renewable energy generation *activities*' to align with the defined term.

33 Similarly, I agree with Commissioner McGarry that the RMA s107 tests in Rule R104 of the NRP which are reflected in recommended Rules WH.R17 and P.R16 do not align with the exact wording used in clauses (f) and (g) in s107 of the RMA. I note that these s107 tests are reflected the same way as they have been in Rule R104 in other permitted discharge rules in the NRP. However, the s107 tests have been correctly worded in the provisions in PC1 and therefore I recommend amendments to WH.R17 and P.R16 are made under Clause 16 of the RMA to align these rules with the wording used in s107 of the RMA and other applicable rules in PC1.

#### **Categorisation of provisions**

34 There were questions raised during the hearing regarding the need for re-assessment of categorisation of provisions if amendments are made to notified provisions or whether the categorisation of provisions only applies to the provision(s) as notified.

35 I have conferred with Ms Anderson, Counsel for the Council, and confirm that new provisions and amendments to notified provisions need to be assessed or re-assessed (respectively) as to their categorisation under the FPP or P1S1. This results in the new definition of vegetation clearance (responding to the relief sought by NZTA)<sup>9</sup> being categorised to P1S1 and I recommend Rules WH.R17-WH.R19 and P.R16-P.R18, and Maps 91 and 94 (noting they are recommended to be deleted) be re-categorised to P1S1 because the rules cover discharges to land and water, and the definition of water includes coastal water. As a result, I recommend removal of the freshwater icon and replacing it with a coastal icon in these provisions in Appendix 1. I note these amendments also respond to the relief sought by Mr Horrell<sup>10</sup>, on behalf of Winstone Aggregates related to the vegetation clearance provisions.

### **Understanding of protection of riparian margins in the NRP and PC1**

36 Commissioner McGarry sought clarification about what is currently in the NRP and PC1 in relation to protection of riparian margins and how that might fit in terms of guidance for a decision maker on a forestry application. I summarise the existing requirements related to setbacks from surface water bodies and riparian margins below. I have only assessed rules related to land or soil disturbance as these are the most relevant.

#### NRP

- (a) The following rules have a 5m setback for earthworks or vegetation clearance except where the activities are undertaken in association with Rules R122, R125, R126, R127, R128, R130, R131, R132, R134, R137 and R139 (beds of lakes and rivers rules):
  - i. Rules R101, R102, R103 (earthworks) and Rule R104 (vegetation clearance)
- (b) Rule R106 has requirements to avoid placing soil or debris where it can enter a surface water body or the coastal marine area and a setback for vegetation clearance and earthworks of 10m from a surface water body.
- (c) Activities in wetland general conditions have specific setbacks for plantation forestry activities as follows:
  - (i) earthworks must not occur within 10m of a natural wetland, and

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<sup>9</sup> Discussed in paragraphs 60-62 of this Right of Reply statement

<sup>10</sup> Paragraphs 5 and 6 of Mr Horrell's speaking notes <https://www.gw.govt.nz/assets/Plans-policies-by-laws/PNRP/Hearing-Documents/HS3/Presentations-Speaking-Notes/HS3-S206-Winstone-Aggregates-Speaking-notes-of-Mr-Horrell.pdf>

- (ii) harvesting machinery must not be operated within 10m of a natural wetland
- (iii) mechanical land preparation must not occur within 10m of a natural wetland.

PC1

- (d) PC1 as notified has no permitted standards for setbacks for vegetation clearance or forestry activities but WH.R17 and P.R16 require debris from the vegetation clearance is not placed where it can enter a surface water body.
- (e) WH.R23 and P.R22 require earthworks shall not occur within 5m of a surface water body or the coastal marine area, except for earthworks undertaken in association with Rules R122, R124, R130, R131, R134, R135, and R137.

37 I have conferred with Ms Vivian, section 42A reporting officer for the earthworks topic, and understand she has not recommended any changes to the current 5m setbacks in the PC1 earthworks rules.

38 In comparison, the NES-CF has the following provisions related to setbacks from freshwater (of relevance to PC1):

- (a) Afforestation (Regulation 14), mechanical land preparation (Regulation 74(8) and replanting (Regulation 78) have the following setbacks:

*5 m of —*

- (i) a perennial river with a bankfull channel width of less than 3 m; or*
- (ii) a wetland larger than 0.25 ha; or*

*10 m of—*

- (i) a perennial river with a bankfull channel width of 3 m or more; or*
- (ii) a lake larger than 0.25 ha; or*
- (iii) an outstanding freshwater body; or*
- (iv) a water body subject to a water conservation order; or*
- (v) a significant natural area;*

*Replanting also must not occur in any area closer than the stump line to an adjacent—*

- (a) perennial river; or*
- (b) wetland; or*
- (c) lake; or*

- (d) coastal marine area; or*
- (e) significant natural area.*

(b) Earthworks (Regulation 29) have a minimum setback of 10 m of -

- (a) a perennial river; or*
- (b) wetlands larger than 0.25 ha; or*
- (c) lakes larger than 0.25 ha; or*
- (d) an outstanding freshwater body; or*
- (e) a water body subject to a water conservation order.*

However, there are exclusions to these setbacks if:

- (a) 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) the earthworks within the setback will result in less than 100 m<sup>2</sup> of soil disturbance in any 3-month period, and are not within 5 m of the water body; or*
- (c) earthworks are for the maintenance and upgrade of existing earthworks.*

(c) For harvesting, Regulation 68 sets out standards related to disturbance of the margins of waterbodies. These require:

- (1) Trees must be felled away from any water body or riparian zone during harvesting, except where it is unsafe to do so, to minimise disturbance to the margins of water bodies and to the coastal marine area.*
- (2) If the exception in subclause (1) applies, trees must be felled directly across the water body for full-length extraction before de-limbing or heading.*
- (3) Full suspension tree harvesting in a manner that lifts the entire tree above the ground must be achieved across rivers of 3 m or more in width.*
- (4) Harvesting machinery must not be operated, except where subclause (5) applies,—*
  - (a) within 5 m of—*
    - (i) a perennial river with a bankfull channel width less than 3 m; or*
    - (ii) a wetland larger than 0.25 ha; or*
  - (b) within 10 m of—*
    - (i) a perennial river with a bankfull channel width of 3 m or more; or*
    - (ii) a lake larger than 0.25 ha; or*
    - (iii) an outstanding freshwater body; or*

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

*(5) Harvesting machinery may be operated in the setbacks required by subclause (4) only if—*

*(a) any disturbance to the water body from the machinery is minimised; and*

*(b) the harvest machinery is being operated—*

*(i) at water body crossing points; or*

*(ii) where slash removal is necessary; or*

*(iii) where essential for directional felling in a chosen direction or extraction of trees from within the setbacks in subclause (4).*

*(6) When harvesting occurs within or across a riparian zone, all disturbed vegetation, soil, or debris must be deposited to avoid it entering into water, and to avoid—*

*(a) diversion or damming of any water body or coastal water:*

*(b) degradation of any aquatic habitat or riparian zone:*

*(c) damage to downstream infrastructure or property.*

39 There are additional setbacks for wetlands in Regulation 97 of the NES-CF but I have not included these above as I understand the NRP requirements related to wetlands are already more stringent than the NES-CF.

#### **Wording in Policies WH.P26 and P.P26**

40 Commissioner McGarry queried whether (d)(ii) of Policies WH.P28 and P.P26 could be worded along the lines of having regard to methods to reduce the risks of sediment and whether clause (d) of Policy WH.P28 and P.P26 could be simplified to have regard to the sensitivity of the receiving environment to suspended sediment discharges, particularly where TAS are not met.

41 I agree with Commissioner McGarry as I consider these amendments will provide clarity and simplify the wording in these policies. I recommend amendments to this effect in Appendix 1.

42 Chair Nightingale acknowledged the definition of forestry management plans pulls through information requirements from the NES-CF Schedules insofar as they relate to water quality but was concerned about other matters that are included in the schedules but not included in the definition in the plan (i.e. indigenous fish requirements) and whether they simply 'fall away'.

43 The need for an advisory note (or similar) to address this concern was discussed during the hearing and I agree that an advisory note would support implementation. I recommend including an advisory note to this effect in the forestry management plan definition as shown in Appendix 1. In addition, I recommend an advisory note be added to the forestry policies (WH.P28 and P.P26) to make it clear to plan users that other provisions of the plan still apply to the consideration of forestry activities where consent is required under the NES-CF; for example, the indigenous biodiversity, natural character and sites with significant values provisions of the NRP also apply.

#### **Rules WH.R20 and P.R19**

44 Chair Nightingale asked me to consider whether matter of discretion (1) of Rules WH.R20 and P.R19 was appropriate in light of the policy direction in WH.P28 and P.P26 which is to avoid *significant* adverse effects and otherwise minimise adverse effects. Commissioner McGarry then asked whether the threshold of significance is appropriate, or in a catchment which is highly sensitive, i.e. not meeting the relevant TAS, is the threshold of 'significant' actually too high?

45 I have recommended amendments in Appendix 1 which better align matter of discretion (1) in WH.R20 and P.R19 with Policies WH.P28 and P.P26. On the point of whether the threshold of significant adverse effects is too high, the policy direction I have recommended requires significant adverse effects from sediment discharges to be avoided and all other adverse effects to be minimised<sup>11</sup>. In my opinion, this is appropriate for a restricted discretionary activity status because if the policy were directing avoidance of all adverse effects then a higher activity classification (non-complying) would be required and I do not consider there is the evidence base or higher order direction (given the status of Policy CC.6 of RPS Change 1) for such a restrictive activity status at this time. Additionally, land which meets the RPS Change 1 definition of highly erodible land has not been identified. As such, the locations where avoidance of afforestation and replanting of plantation forestry is required are not yet known.

#### **Mana whenua involvement in Method M44A**

46 During the hearing, Commissioner McGarry asked if I consider Method M44A should include mana whenua as well as forestry sector organisations and landowners. I responded that, in

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<sup>11</sup> Defined in the NRP as: Reduce to the smallest amount reasonably practicable. Minimised, minimising and minimisation have the corresponding meaning.

my opinion, Method CC.4 of the RPS, which directs the development of a forestry spatial plan alongside mana whenua and stakeholders (including forestry and territorial authorities), was a more appropriate place for mana whenua involvement. Commissioner McGarry then requested I give more thought to whether clause (d) of Method 44A needs to include mana whenua involvement in the development of 'standard' consent conditions for forestry activities. This was on the basis that if mana whenua were comfortable with the standard conditions developed to respond to effects of forestry they might not need to be involved in consent applications for forestry.

- 47 Upon reflection, Method M44A requires areas at greatest risk of effects from forestry activities to be identified. In my opinion, greatest risk of effects could include areas with effects on cultural values and mana whenua are best placed to identify and communicate where effects on cultural values are likely to be more pronounced. In this way, I consider mana whenua involvement in identifying areas at greatest risk of effects from forestry activities and the development of standard consent conditions is important and recommend amendments to the chapeau of Method 44A to include mana whenua alongside forestry sector organisations and landowners.

### **Equity**

- 48 In his submitter evidence and his hearing statement Mr Wyeth, on behalf of NZFFA, raised concerns about equity and the different approaches to regulation of sediment generating activities in PC1. Mr Wyeth suggests rural activities should be doing their part and that he would still expect to see an effects-based approach where the more stringent requirement should apply to the activities that generate the most sediment but his view is PC1 appears to take the opposite approach whereby a more stringent regime is proposed for commercial forestry compared to rural land use (farming) despite all experts seeming to agree that the latter delivers the highest sediment load.
- 49 In my opinion, it is important to provide some context to the issue of 'equity' as it relates to PC1. While it is not disputed that over the life cycle of a forest (~30 years) contributions of sediment from rural land use are expected to be higher than that from forestry, this ignores the fact that during the earthworks and harvest periods sediment loads could be 4-5 times higher than those from rural land use, noting sediment loads from rural land use are a constant pressure rather than having a specific period where sediment generation is

substantially higher<sup>12</sup>. Taking into account the ‘window of vulnerability’ for forestry which, based on the technical evidence of Mr Blyth and clarified by Mr Reardon during the hearing, could endure for over 8 years<sup>13</sup>, sediment loads from forestry will be higher than those of pasture for a significant period of time. In my opinion, the argument that over the longer-term once forestry has established, sediment loads will be lower is insufficient justification to not regulate forestry, or to have a less stringent regime for forestry than that for pasture, as this ignores the potentially significant impacts forestry could have on water quality during earthworks and harvest.

50 In my opinion, noting that the regulation of afforestation and replanting in PC1 is in the context of managing future effects from erosion and discharges of sediment during earthworks and harvest, it is entirely appropriate that the potential effects of sediment during ‘active’ forestry activities (earthworks, vegetation clearance, harvest) are regulated under PC1 and that these activities be regulated in a manner more stringent than rural land use activities given sediment loads will be substantially greater than those from pasture during this time. I note that this point was also made by Mr Commissaris on behalf of EDS<sup>14</sup>.

#### **Commentary on consent conditions provided in rebuttal evidence**

51 Ms Strang, acting on behalf of NZFFA, in her evidence and hearing statement commented on the example consent conditions provided in my rebuttal evidence and expressed her view that there was little difference between the consent conditions and the requirements of the NES-CF.

52 While there are similarities between the consent conditions and the requirements of the NES-CF, the consent process provided an opportunity to review the appropriateness of the forestry activity and the management plans submitted in support of those applications. As can be seen in the officers’ reports, in most instances there were further information requests from Council and their reviewers that applicants needed to respond to and multiple iterations of the management plan(s) and supporting information as a result. The key condition on these consents is therefore Condition 1 which outlines the information that the activity must be undertaken in accordance with. This back and forth with the applicant about the appropriateness of the methodologies proposed, the types or location of controls and ultimately Council retaining the ability to prevent forestry activity

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<sup>12</sup> With the exception of during and after rainfall events

<sup>13</sup> Statement from Mr Reardon during the hearing (refer Paragraphs 2388 – 2390 of Hearing Stream 3 Day 2 transcript)

<sup>14</sup> Statement from Mr Commissaris during the hearing (refer Paragraphs 1294 – 1303 of the Hearing Stream 3 Day 5 transcript)

proceeding until satisfied that the methodology, controls or other management measures are appropriate is the key failing of the NES-CF framework currently.

- 53 Ms Strang's commentary also ignores the fact that Council can impose conditions to respond to the actual or potential effects of an activity based on any site specific or activity specific values or constraints. In this way, just because conditions in the past have been relatively similar, does not mean to say that this would be the case moving forward once Council reflects on the appropriateness of how they are currently regulating forestry activities. I note my recommended Method M44A requires Council to work with the sector to develop consent conditions which enable Council to obtain a better understanding of, and respond to, effects during the different stages of the forestry cycle. During the hearing, Mr Pepperell also referred to the value of conditions which require as-built plans, such that Council gain a level of certainty that erosion and sediment controls have been installed appropriately prior to activities being undertaken rather than having to wait until a site-inspection to see that controls might be incorrectly installed, and adverse effects have already occurred.

#### **Concerns about practicalities of forestry management plan requirements**

- 54 During the hearing, Ms Strang and Mr Guttke (NZFFA) and Mr Rillstone (Guildford Timber, Silverstream Forest and Goodwin Estate) expressed concern about the practicalities of some of the requirements of the forestry management plan process. After hearing from Mr Guttke and Ms Strang I agree that it may not always be possible to take photographs of potential erosion risk land given vegetation cover, topographic or access constraints and recommend amendments to include "where practicable" in clause (iii) of the forestry management plan definition to account for such situations. I have also made amendments to the definition to make it clear it is only potential erosion risk land affected by commercial forestry activity that needs to be identified and assessed in a forestry management plan.
- 55 I have discussed the concerns relating to the need for ground-truthing or the expectations around ground-truthing, with Mr Reardon and the following paragraphs set out my understanding of the steps that should be followed by a landowner or forest manager if good practice was being adopted during the preparation of management plans under the NES-CF, based on the advice of Mr Reardon. I emphasise that Mr Reardon advises the extent of planning and site validation is generally based on operational risk and not necessarily the size of the forestry block.

56 Mr Reardon advises good practice planning would generally include preparing draft harvest plans on a desktop basis using terrain information, latest aerial imagery, and using roading software to design and locate roads (for the bigger companies) and then on-site validation and refinement - walking the forest where possible to ground truth the plan<sup>15</sup>. The harvesting contractor, if there is one allocated to the job, or the harvest manager should be doing this to validate their harvest plans i.e. road alignment, skid locations, hazards/bluffs etc. I understand from Mr Reardon that most contractors would be walking a block to help them price the work required to harvest it. The extent of the ground-truthing corresponds to the scale and complexity of the harvest, less complex sites may only need very rudimentary ground validation if there is limited risk – gentle slopes, no waterways, basic engineering etc.

57 I also understand from Mr Reardon that Worksafe in some areas of the country are now requesting that forest owners/managers show proof of their harvest planning details - how early the planning started, how many site visits were undertaken, has a contractor approved the plans and is happy they suit their configuration and set up. While WorkSafe are looking at things purely with a health and safety lens it demonstrates that site-visits and ground-truthing of forests is not an unreasonable expectation.

58 Other than specific consideration of potential alternative strategies on potential erosion risk land, in my opinion, there is nothing in my recommended amendments to PC1 outside of what is considered good practice and these requirements should be undertaken already.

### **Concerns of EDS**

59 Mr Commissaris, on behalf of EDS, expressed concern about several matters arising from recommended amendments to provisions in my section 42A and rebuttal evidence. I address amendments I have made to respond to some of these concerns below.

59.1 Mr Commissaris expressed concern about the provisions limiting the avoidance directive to significant adverse effects because this might 'miss the mark' in terms of managing cumulative adverse effects.

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<sup>15</sup> The NZFOA Road User Manual (2020) states planning and field reconnaissance identify and mitigate potential construction and environmental issues, and a well-prepared paper plan ensures that field validation focuses on addressing issues rather than trying to identify them. It is a false economy to take shortcuts in these areas (page 7) and Page 31 includes discussion on the importance of field work and 'walking the block' as a key component of planning for roads

I respond to this concern in response to Commissioner McGarry at paragraph 45 above. During the hearing Mr Commissaris also mentioned the effects management hierarchy and whether that might be more appropriate. In my opinion, the effects management hierarchy is inappropriate in the context of diffuse discharges, such as sediment from multiple land uses, where the scale of effect from a particular source, and in fact the particular source itself, may not be straight forward to identify.

59.2 Mr Commissaris expressed a number of concerns and suggested improvements related to Rules WH.R20 and P.R19 as follows:

59.2.1 Matters of discretion in Rules WH.R20 and P.R19, requiring avoidance where practicable and otherwise minimise, does not give effect to the policies, section 107 or the “right tree right place” objectives under the RPS and PC1.

I acknowledge the concern of Mr Commissaris and I understand the concern relates specifically to the use of “where practicable” in matter of discretion (1) of the rebuttal version of these rules. I have recommended amendments to remove “where practicable” and to better align the matter of discretion with the direction of WH.P28 and P.P26 which in my opinion responds to Mr Commissaris’ concerns on this point.

59.2.2 Mr Commissaris asked if matters of discretion 1 in Rules WH.R20 and P.R19 could be more clearly framed so they require or provide the discretion for Council to ensure that the measures in the forestry management plan actually demonstrate the avoidance of significant adverse effects. Mr Commissaris suggests management methods could be brought out into potential, or more explicitly outlined as potential methods as conditions of consent, and that should include examples of what they might look like. For instance, greater setbacks, alternative harvesting methods etc.

I have made a deliberate decision to leave matters of discretion broad to ensure that the range of matters included as matters of discretion in the NES-CF that apply when permitted regulations

cannot be met are appropriately captured in PC1. The matters of discretion, alongside the policy direction in WH.P28 and P.P26, in my view, provide Council with sufficient direction to consider the suitability of any conditions or controls that might be implemented on a consent. I note the matters of discretion on other rules in both the NRP and PC1 focus on management of effects rather than providing specific direction around what sorts of conditions or requirements might be necessary to manage potential effects and my amendments are consistent with this approach.

- 59.3 Mr Commissaris suggests the definition of forestry management plan in PC1 should make it clear that it relates to provisions that manage commercial forestry in the context of sedimentation and that there are other considerations in the NES-CF and NRP that arise in relation to other things that Council needs to manage, for instance, biodiversity.

I agree with Mr Commissaris and have recommended a new advisory note in the definition of forestry management plan in Appendix 1. I note I have recommended similar amendments to WH.P28 and P.P26 in response to Chair Nightingale's questions at paragraph 43.

- 59.4 Mr Commissaris expressed that the approach to the deficiencies in the erosion risk mapping needs to be consistent. That is to say, if Council was to rely on some of the deficiencies with erosion risk mapping to justify that high erosion risk areas should not be managed because it is uncertain whether or not they are high risk, then the same principle must apply to low risk areas – being that perceived lower risk land might not in fact have lower risk of erosion.

I acknowledge the argument put forward by Mr Commissaris and recommend amendments to the forestry management plan definition to require ground-truthing of erosion risk on all land rather than just 'potential erosion risk land' and have provided some examples of factors which would elevate the risk of erosion which should be identified and recorded in the plan<sup>16</sup>. I also recommend amendments to clause (v) to require consideration of specific management strategies or practices areas of land identified as having elevated

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<sup>16</sup> Where a resource consent is required (where TAS are not met or the permitted standards of the NES-CF are not met).

erosion risk alongside potential erosion risk land. As noted in paragraphs 56 and 57 above, if good practice was being followed field inspections should be undertaken to validate the harvest planning so in my opinion assessing erosion risk as part of this field inspection is not an unreasonable requirement.

59.5 Mr Commissaris expressed concern about the equal treatment of carbon forest and native forest and suggested, in accordance with the New Zealand Emissions Reduction Plan and RPS Change 1, Council should be prioritising native forestry.

I agree that national direction and RPS Change 1 require native forest to be prioritised over carbon forestry and recommend amendments to Method M44A in Appendix 1 so that indigenous forest is given priority over exotic continuous-cover forest. I have made similar amendments to Schedule 27 to ensure alignment with Method M44A.

59.6 Mr Commissaris suggested that the forestry management plan framework that applies to plantation forestry, or a modified version, might also be beneficial for exotic continuous-cover forestry.

As noted in my rebuttal evidence, exotic continuous-cover forestry, insofar as it relates to new forest or replanting, is outside of the scope of PC1. Disturbance activities associated with exotic continuous-cover forestry (e.g. earthworks, vegetation clearance) will be managed in the same way as plantation forestry. Any harvest of exotic continuous-cover forest is managed by the NES-CF as this is more restrictive than PC1 as it stands and would be a discretionary activity<sup>17</sup>.

### **Vegetation clearance definition**

60 Despite my rebuttal evidence confirming Council do not interpret the 'and' in the NRP definition of vegetation clearance as conjunctive, Ms Heppelthwaite for NZTA expressed concern that, despite the interpretation of Council officers, this definition still implies the list is conjunctive, and ultimately the relief sought by NZTA in their original submission<sup>18</sup> stands.

61 In response to Ms Heppelthwaite's concerns, I recommend the inclusion of a new definition for vegetation clearance in PC1 which is specific to TWT and TAoP which

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<sup>17</sup> Regulation 71C of the NES-CF

<sup>18</sup> NZTA [S275.027] (supported by Meridian [FS47.235], opposed by Forest & Bird [FS23.721]) and [S275.029] (supported by Meridian [FS47.373], opposed by Forest & Bird [FS23.723])

removes the 'and' to reflect the correct application of the rule. This amended definition aligns with the definition of vegetation clearance in RPS Change 1.

62 In my opinion, this appropriately responds to the relief sought by NZTA without having to list specific 'carve-outs' or exclusions for roads and tracks in the rules themselves.

### **Changes to national direction**

63 During the hearing, on 29 May 2025, the Government commenced public consultation on proposed changes to national direction with amendments to 12 national instruments and four new national instruments.

64 In the context of this topic, a range of amendments to the NES-CF are proposed. Those amendments most relevant to this topic include:

64.1 Amendments to regulation 6(1)(a) (circumstances in which a rule in a plan may be more stringent than the NES-CF) to be more specific about the criteria for how councils can impose stricter rules. Under the proposal a rule in a plan may only be more stringent if the following 'criteria' are met (it is unclear if the criteria all have to be met or whether the criteria are separate):

- it is required to manage the risk of severe erosion from a commercial forestry activity in a defined area that would have significant adverse effects on receiving environments, including the coastal environment, downstream infrastructure and property
- the risk cannot be managed through the current rules in the NES-CF
- an underlying risk has been identified within the defined area through mapping at a 1:10,000 scale or using a 1 square metre digital elevation model

64.2 Repealing regulation 6(4A) which allows more stringent rules for afforestation. There would still be an ability for councils to consider making a more stringent rule under proposed amended regulation 6(1)(a) if the requisite stringency requirements were met.

64.3 Repealing regulations 10A and 77A which require afforestation and replanting plans and repeal Schedule 3 which sets out the requirements for these plans

65 It is not clear at this stage how the government is defining “risk of severe erosion”, what would constitute significant adverse effects or what other underlying risks might meet the criteria for stringency. In terms of the erosion risk threshold, my understanding from discussion with Mr Blyth and Mr Nation is that there is currently no strict definition of ‘severe erosion risk’ although the ESC used in the NES-CF outlines the relationship between erosion severity and the ESC classification for mass movement erosion (note this does not include other erosion types). At the simplest level, this relationship implies that any land identified in the ESC as High (which reflects Orange zoned land under the NES-CF) *could* be considered to have ‘severe’ erosion risk. This would capture significant areas of land across the Wellington region (and New Zealand) and, in my opinion, this is not the intent of proposed amendments. Therefore, it is likely that additional guidance will need to be provided by the government to support implementation of any changes made to the NES-CF.

**Table 1:** Relationship between ESC class and potential erosion severity for mass movement erosion (Bloomberg et al. 2011)

Potential erosion severity	ESC class
0 = negligible	1 = Low
1 = slight	1 = Low
2 = moderate	2 = Moderate
3 = severe	3 = High
4 = very severe	4 = Very High
5 = extreme	4 = Very High

66 I note that if the proposed repeal of Regulation 6(4A) related to afforestation is progressed, there is a risk Council may not have the ability to give effect to RPS Change 1 direction as, depending on the interpretation of risk of severe erosion, afforestation may not be able to be more stringent than the NES-CF.

**Status of RPS Change 1 mediation on Policy CC.6 and ‘Highly erodible land’**

67 I understand from Council officers that mediation on Policy CC.6 and the definition of Highly erodible land in RPS Change 1 occurred on 17 June 2025. The recorded agreements on these provisions reached during mediation are shown in Appendix 4.

68 Agreed changes most relevant to this Right of Reply include:

- 68.1 Additional explanatory text being added to the definition of highly erodible land which describes for implementation of Policy CC.6(b) through a regional plan,

highly erodible land shall be identified at a property-scale using high resolution spatial data. It is currently not clear whether the identification of highly erodible land will be undertaken by Council as part of a future plan change or implementation of Method CC.4 of RPS Change 1, or there is an expectation that the costs of identifying highly erodible land will fall on landowners.

68.2 Policy CC.6(b) has been redrafted to narrow the focus to avoiding afforestation and replanting of plantation forestry on highly erodible land and this now applies regardless of whether (or not) water quality targets for a catchment are met.

68.3 Method CC.4, related to the development of a forest spatial plan, has also been amended to include a greater emphasis on the need to identify where afforestation and replanting of plantation forestry should be avoided.

69 At this time no Consent Orders have been signed or ratified by the Environment Court and therefore I confirm I have had regard to the amendments agreed through mediation but I am not required to 'give effect' to them at this time. I do not recommend any further changes to provisions arising from the mediation agreements. This is because land which meets the definition of highly erodible land has yet to be identified and Method CC.4 has not been implemented and, in my opinion, it is premature to require avoidance of identified activities on highly erodible land through PC1. I consider Council should more fulsomely work out how best to give effect to Policy CC.6 of RPS Change 1 as part of a future plan change.

**DATE: 2 JULY MONTH 2025**



**SHANNON JOHN WATSON**

**TECHNICAL LEAD – PLANNING (GHD)**

## Appendix 1

## Appendix 2

## Appendix 3

## Appendix 4