New Zealand Farm Forestry Association
Oranga Rākau Aotearoa

Environmental Policy,
Greater Wellington Regional Council
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## Supplementary Information and Evidence for Stream 3 Hearings on PC1

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| About this organization: | The NZFFA represents people who own small-scale private forests and/or are interested in the many values of trees. Currently we have over 1200 members representing a good cross-section of the approximately 16,000 entities owning private forests in New Zealand. In the Wellington region, the NZFFA has about 100 members with direct interests or ownership in small scale forestry. |

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# Summary

- Our original submission was allocated submitter number S195
- We support some of the recommendations in the S42A report:
  - We agree with the recommendation to remove the harvesting prohibition for Plantation Forestry on steep land.
  - We agree that the mapping for high erosion land is unsuitable for managing forestry activities and should be removed.
  - We agree with the deletion of rulesP.R20, P.R21, WH.R21, and WH.R22
  - We agree that where for a part-FMU the TAS for sediment is met, the NES-CF will prevail
  - We agree with the recommendation listed in the Section 42A report: "Freshwater plans B3 Necessary actions" and would like to see more focus on training council officers to improve their knowledge of forestry and the applicable regulations

- We disagree that were the TAS for sediment is not met that then the NES-CF provisions will be replaced and commercial forestry will determined to be either either a controlled activity (see the original PC1 document) or a restricted discretionary activity (S42A recommendation).
- We point out some implications of following the recommendations in the S42A report that are in conflict with the RMA

# Regulation of Forestry Activities outside of the NES-CF

## 1. Key Issue

The National Environmental Standards for Plantation Forestry (NES-PF) took seven years of negotiations amongst Government officials, Council representatives and industry figures. The document was thoroughly considered before it was released. The NES-PF was replaced in November 2023 by the NES-CF which has even stronger environmental controls. We do not believe that new rules in this Plan should over-ride it, unless and until that need is proven.

**We ask for the proposed forestry related changes , i.e. P.R19, P.R20 and P.R21, as well as Rules WH.R20, WH.R21 and WH.R22 and also the detailed notes that these new rules prevail over certain rules in the National Environmental Standards for Commercial Forestry (NES-CF) to be removed from the draft plan.**

**We also disagree with the S42A recommendation to change P.R19 and WH.R20 to make forestry a restricted discretionary activity where the TAS for sediment is not being met**

## 2. Stringency Requirements

Currently forestry is governed by the NES-CF, which resulted from a review of the NES-PF to ensure the rules cover permanent forests (e.g. carbon forests) and that the environmental standards, especially those related to water quality, are fit for purpose. It has many more restrictions and safeguards than its predecessor and was developed with substantial input from regional councils. There is no evidence that the NES-PF failed to achieve the water quality standards in the affected Whaituas, nor is there any evidence that the new, more stringent NES-CF will fail (see also Dr Greer's evidence in paragraph 32 and 35)

Without such evidence, there is no reason to undercut a national environmental standard

We suggest that even if Plan Change 1 was adopted, it would be impossible for Greater Wellington Council to determine whether or not the new regulations for forestry resulted in any discernible improvements in water quality.

We commissioned expert evidence by Jerome Wyatt, which concludes in Paragraph 76:

"*However, in my opinion, the more stringent rules for commercial forestry in PC1 do not adequately meet the tests in Regulation 6 of the NES-CF and section 32(4) of the RMA. In particular, I consider that there is insufficient evidence that NES-CF regulations are inadequate to achieve the relevant TAS freshwater objectives in PC1. Rather many of the identified issues appear to relate to the*

*implementation of the NES-CF (including compliance monitoring) and I anticipate that proposed Rule WH.R20 and Rule P.R19 may simply lead to the same environmental outcomes at a greater economic cost to Council and foresters."*

The expert evidence by Mr Wyatt is very clear: the requirements for more stringency under regulation 6 of the NES-CF have not been met, and therefore the NES should continue to prevail. His evidence is mirrored by the recent High Court decision in *Rayonier New Zealand Ltd v Canterbury Regional Council* [2024] NZHC 1478 which considered a similar issues in relation to Plan Change 1.

## 3. NES - Fitness for Purpose

The S42 report used the evidence of Mr Reardon and Pepperell to justify that the NES-CF is not fit for purpose. Mr Reardon specifically identifies that there is an issue with compliance by woodlot owners and a higher future risk of sedimentation. Mr Pepperell states that he has some workforce issues and that there is a lack of detail in the management plans provided to him. Both experts agree that non-regulatory measures will significantly improve the environmental outcomes.

This is mirrored by the Te Whanganui-a-Tara WIP recommendation 37 :

*"Greater Wellington provides enough staff and resources to:*

1. *Work with forestry groups (New Zealand Farm Forestry Association, New Zealand Forest Owners Association) and contractors to provide proactive advisory support that includes ensuring all forestry operators are aware (by 2023) of relevant regulatory requirements and good practice*
2. *Ensure all forestry operators in the Whāita are monitored for compliance with the National Environmental Standard for Plantation Forestry (NES-PF) and other relevant requirements from 2023 onwards, and share this monitoring information with the community*
3. *Take enforcement action on non-compliance."*

And Te Awarua-o-Porirua WIP recommendation 55: relating to improving the management of plantation forestry to reduce sediment.

*"Upon receiving notice under the NES-PF of earthworks, forestry quarrying or harvesting in the Te Awarua-Porirua Whaitua, Greater Wellington requests a copy of the Forestry Earthworks Management Plan and Harvest Plan or Quarry Erosion and Sediment Management Plan, and actively monitors compliance to ensure sediment discharges to waterbodies are minimised."*

These recommendations are predominantly focussed on using the NES-PF (now CF) to achieve improved outcomes by working with industry and improve monitoring and enforcement.

The NES-CF became effective in late November 2023 – at the time PC1 was published. From that point forward it became impossible for a woodlot owner to

manage even a small afforestation/replanting project by himself due to the increased planning and mapping requirements in the NES-CF which will require an expensive GIS system and expertise in order to meet those requirements. This resulted in woodlot owners needing to use professionals, i.e. forest management companies, to do that work. There are several large forest management companies (e.g. Forest360/John Turkington or PF Olsen) active in the lower Norths Island. These manage the bulk of forestry activities for small woodlot owners and have environmental managers to ensure that regulations are followed. If there are too many issues with woodlot owners then that implies that is not the regulation but the knowledge on the ground and/or enforcement that is lacking.

Given that Mr Reardon's evidence is lacking any quantitative analysis, and Mr Pepperell states that in the past 5 years, there have been only 3 abatement notices issued in the two Whaitua (equalling less than one abatement notice per year), we question whether there is actually a problem other than more (qualified) staff and more compliance monitoring to be addressed.

We agree with Mr Pepperel's evidence that his staff lack forestry expertise and have therefore difficulty in enforcing the NES-CF regulations. However, by making the majority of forestry activities subject to obtaining a restricted discretionary consent, with each consent having potentially different requirements to meet, the enforcement team's task will become significantly more complex. The workload of his team will also increase, and we do have little confidence that the proposed changes will lead to better environmental outcomes.

The expert evidence provided by Sally Strang concludes in essence

> *"Almost all of the shortcomings raised with the NES CF are not in my opinion directly related to the NES CF wording and will remain the case whether activities are carried out under the NES CF or resource consents.*
>
> *In my experience consent planners will have the exact same challenges writing clear specific conditions in resource consents for forestry operations as is the case in plan regulations.*
>
> *Deferring all five of the proposed forestry activities to restricted discretionary activity status seems an excessive response to the challenges and in my opinion is not warranted by the evidence. Based on my experience elsewhere, I am doubtful that deferring all of the activities to a restricted discretionary activity status will result in better environmental outcomes and will certainly incur greater costs and the need for greater resourcing, for both foresters and the council.*
>
> *The more effective response would be for the council to increase interaction with the forest industry, upskill monitoring staff and undertake routine targeted compliance monitoring based on the level of risk, regardless of activity status."*

While not explicitly stated by Ms Strang, her evidence also invalidates the S42A analysis (Paragraph 200) that increased regulation will lead to better outcomes.

## 4. Evidence and being equitable

Although officials have claimed in the Section 32 report (e.g. page 103) that forestry is responsible for the "current degraded state" of water bodies, Greater Wellington has not provided any scientific evidence to support this. While the lack of evidence has been acknowledged in the S42A report and in Dr Greer's evidence, council continues to argue that it wanted all land uses to contribute in an equitable way to improvements in water quality. 'Evidence' is objective but 'equitable' is not. Dr Greer agrees in paragraph 33 of his evidence with NZFFA's statement that "In terms of sediment, commercial forests discharge less than any other commercial land use, and are second only to indigenous forests". So why is it equitable to penalise forest owners? It seems that rural activities are being singled out as for no other activities the issue of whether a consent will be required is dependent on the TAS of a catchment. A good example are urban development activities , which can and do create a lot of sediment.

## 5. Rules are not effects based

Forestry activity rules as recommended in Section 42 will apply to a forest owner in very different ways dependant on the TAS for sediment in his catchment. The water clarity not meeting the TAS may be due to:

- An upstream or downstream discharge which is in breach of a consent – this could even be a district council breaching a consent
- A permitted discharge shedding sediment which is excluded from the restrictions in PC1 such as maintenance work on a metalled road
- A prior discharge of sediment from another forest in the catchment having just been harvested.
- The sequence of harvesting of several forestry blocks. The proposed regulations state that where the TAS for sediment is not met, matters of discretion will include cumulative effect of discharges. This is likely to result in disadvantaging forest owners that are at the back of the queue because previous harvests may have led to a build up of sediment
- A major weather event such as cyclone Gabrielle will affect water quality for years as sediment works its way out of the system.

None of these events can be influenced by a land owner and yet, they may result in high unnecessary costs, and even then it may not be possible to obtain the consent to undertake a planned forestry activity. I suggest that it is unreasonable to penalise a land owner for the effect of a major weather event, an activity undertaken by a third party, or the timing of his harvesting in relation to other the timing of such other activities when all those factors are completely outside of that person's control

## 6. Reasonable use

Section 5 of the RMA requires resources to be managed *"in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety,"* and Section 85 states that *"any person having an interest in land to which any provision or proposed provision of a plan or proposed plan applies, and who considers that the provision or proposed provision would render that interest in land incapable of reasonable use, may challenge that provision or proposed provision on those grounds."*

The proposed Plan will make it impossible for some forest owners to provide for their economic well-being or to make reasonable use of their land. This applies where the S42A report now seeks to require restricted discretionary consent:

- Where a forest is classified as pre-1990 forest in the ETS and post harvest the application for a replanting consent is declined. Under the ETS, the land will then be treated as "deforested", and the land owner will be required to repay the value of the carbon lost. This equates to around $50,000 per ha and in almost all cases exceeds the value obtained by harvesting. While there could be an option to replant the land in natives, it is very uncertain whether this will be sufficient to meet the ETS criteria.

- Where a post-89 forest is registered under the "average accounting" regime, in the same situation as described above a similar deforestation penalty will apply.

- In some situations it will be impossible for forestry harvesting to meet all of the conditions in a restricted discretionary consent, or even obtain consent. In effect that would leave a land owner, who 30 years ago planted a block of trees, with no income and a stranded asset.

These effects been omitted in the Section 32AA assessment and we argue that what is proposed is also in conflict with Section 5 of the RMA.

## 7. Effect of classifying forestry activities as restricted discretionary

The S42A report implies that making forestry a restricted discretionary activity is not a big ask, as this would only apply were the TAS is not being met, and it would be reasonable straight forward as the information requirement in Schedule 34 are in principle identical to those in the NES-CF. We see some major issues with this

- Using the published TAS for sediment in Mr Blyth evidence in Table 3, the TAS is not being in 73% of all land in the areas covered by PC1. This implies that more or less 73% of all regulated forestry activities would need a restricted discretionary consent (see Appendix 1).

- There is no certainty that a consent for an activity can be obtained, and a land owner may obtain a consent for harvesting, but not for replanting. The uncertainty is exacerbated because it depends on the TAS at the time of the

activity taking place. So if the TAS for sediment is met, a forest owner may order seedlings and contract a planting crew to undertake planting activities. The ordering of seedlings does generally require a lead time of around 9 months – but sometimes longer. However, at planting time the TAS may have changed and the activity now requires a restricted discretionary consent. This will lead to a large financial penalty, as the planting will then most likely not be able to go ahead during that planting season. This issue will also arise for other activities such as earthworks or harvesting

- Given the evidence of Mr Blyth, a commercial forest will shed approximately the same amount of sediment as a native forest – until it is harvested. So where is the rationale for regulating the planting of a permanent forest when it will not contribute more to any sedimentation issues than native forest?

- Should a farm owner in a catchment where the TAS for sediment is not met want to reduce the amount of sediment coming from his land by afforesting a part of his farm, then he will need to apply for consent. So the proposed rules would make it more difficult and expensive for him to achieve a better environmental outcome – this is non-sensical.

- NES-CF already increased planting/replanting costs for a small grower from $1500 to $2500 per ha (pinus radiata). A restricted discretionary consent will, including costs by an external consultant/planner, add at least another $10,000 in project costs. These costs will need to be carried forward for 27 to 30 years. From my more than 30 years of experience with forestry, this will make any planting of trees up to 5 hectares uneconomical as the internal rate of return will be below the cost of capital.

- The proposed discretionary consent for harvesting will create a strong disincentive for any afforestation project. Who will invest in a 30 year project, when there can be no certainty that a mature forest will actually be able to be harvested to generate a return? Given that alternative land uses are producing more sediment than forestry, the proposed regulation will lead to a worse outcome. I also note that the Climate Change Commission advocates for more afforestation in order to meet our climate change commitments. We are unlikely to achieve that objective with the type of regulation proposed.

## 8. Section 32 requirements not met

There is no reason to believe that the recommendations in the plan to make forestry a controlled activity, or in the Section 42A report to make it in most cases a restricted controlled activity will achieve the objectives.

Dr. Greer in his evidence on behalf of Council states on page 17 in (35):

"Thus, it is uncertain whether either the PC1 provisions or the NES-CF will contribute to the TAS being met, or that one will achieve demonstrably greater sediment losses than the other".

In its guidance for Section 32 reports the Ministry for the Environment https://environment.govt.nz/assets/Publications/Files/guide-to-section-32-of-resource-manangemnt-amendment-act-1991.pdf says: "*To date, s32 case law has interpreted 'most appropriate' to mean "suitable, but not necessarily superior*. *This means the most appropriate option does not need to be the most optimal or best option,* ***but must demonstrate that it will meet the objectives in an efficient and effective way****."*

Given Councils own evidence, the proposed measures have not been demonstrated to meet the objectives. The analysis in the Section 32 Report Part D (page 116) which states that *"The nature and scale of the problem is well understood, as are the interventions needed to bring about the changes to meet outcomes set in objectives*" is incorrect and the proposed regulations have not been justified.

## 9. Afforestation and Replanting: Rule P.R19 and Rule WH.R20

Afforestation is a change in land use from generally pastoral use to forestry. In accordance with Mr Blyth's and Mr Greer's evidence – unless a forest is harvested it will generate less sediment than any other commercial land uses. The act of afforestation itself will not generate any measurable change in sediment.

Replanting takes place post-harvest, normally as soon as possible in order to stabilise the soil and obtain benefits from the use of the land. If land use is changed away from forestry and the owner does not replant, then the amount of sediment will increase in comparison to replanting. If the land owner "does nothing", hoping e.g. for a natural regeneration of an exotic or indigenous forest, then those alternatives will – even if successful - generate more sediment than replanting, simply because these processes take much more time to achieve sufficient canopy cover. This also applies to planting native seedlings rather that exotic species

Lastly, it cannot be assumed that every afforestation or replanting activity will lead to harvesting around 30 years time. Examples are continuous canopy forests, forests planted for erosion protection or long rotation species such as cypressus (40-50 years) or redwoods (40-60 years).

**Should, despite the evidence provided by Mr Wyeth and Ms Strang, council deem it necessary to be more stringent than the NES-CF, then we submit to remove afforestation and replanting from P.R.19 and WH.R20**

Egon Guttke
NZ Farm Forestry Association

5 May 2025

**Appendix 1**

| SOE Monitoring Site | Total Area (ha) | Suspended Fine Sediment Current State | Native | Pastoral | Plantation Forest | Other |
|---|---|---|---|---|---|---|
| Horokiri Stream at Snodgrass | 2,884 | C | 14% | 41% | 30% | 16% |
| Whakatikei River at Riverstone | 8,073 | A | 67% | 6% | 24% | 2% |
| Hulls Creek Adjacent to Reynolds | 1,517 | A | 31% | 1% | 22% | 46% |
| Akatarawa River at Hutt Confluence | 11,651 | A | 79% | 3% | 17% | 1% |
| Mangaroa River at Te Marua | 10,370 | D** | 49% | 31% | 16% | 5% |
| Pāuatahanui Stream at Elwood Bridge | 3,943 | D** | 21% | 58% | 15% | 5% |
| Hutt River at Bolcoutt | 61,021 | B** | 66% | 11% | 12% | 11% |
| Porirua Stream at Milk Depot | 4,026 | A | 13% | 31% | 11% | 45% |
| Pakuratahi River Below Farm Creek | 8,047 | A | 70% | 11% | 8% | 11% |
| Mākara Stream at Kennels | 7,203 | D** | 7% | 64% | 8% | 21% |
| Wainuiomata River D/S of Whites Bridge | 13,221 | C** | 65% | 8% | 3% | 24%* |

| | |
|---|---|
| **Total area** | **131,956** |
| **Total area where restricted discretionary consent required** | **36198** |
| **Percentage** | **73%** |