BEFORE THE INDEPENDENT HEARINGS PANELS AT WELLINGTON

IN THE MATTER of the Resource Management Act 1991

IN THE MATTER of proposed Plan Change 1 to the Natural Resources Plan for the Wellington Region

LEGAL SUBMISSION ON BEHALF OF ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED

08 MAY 2025

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1. INTRODUCTION

- 1.1 Environmental Defence Society Incorporated (EDS) submitted on proposed PlanChange 1 (PC1) to the Natural Resources Plan for the Wellington Region (NRP).
- 1.2 The relevant s 42A reports address some of the concerns raised in EDS's submission and these recommendations are generally supported. However, the reports also recommend a 'roll back' of several provisions that were designed to give effect to Te Mana o Te Wai and higher order documents, and these are generally opposed.
- 1.3 This legal submission provides the context and legal basis to support EDS's position in relation to commercial forestry and vegetation clearance as covered in Hearing Stream 3 (HS3).
- 1.4 In relation to any matters not specifically addressed in this legal submission, EDS relies on its original submission.¹

2. OUTLINE

- 2.1 This submission is structured as follows:
 - (a) Overview of EDS;
 - (b) Background and legal framework;
 - (c) Issues; and
 - (d) Conclusion.

3. OVERVIEW OF EDS

3.1 EDS is a public interest environmental group formed in 1971. The focus of its work is on achieving positive environmental outcomes by improving the quality of Aotearoa New Zealand's legal and policy frameworks and statutory decision-making processes.

¹ Submission reference S222

4. BACKGROUND AND LEGAL FRAMEWORK

- 4.1 PC1 makes several region-wide changes but its primary focus is implementing the National Policy Statement for Freshwater Management 2020 (NPS-FM) for two Whaitua: Te Awarua-o-Porirua and Te Whanganui-a-Tara.
- 4.2 This submission does not extensively cover the law applying to preparation of regional plans. Aspects are covered in the s 42A reports and legal submissions on behalf of the Greater Wellington Regional Council (**Council**).² Counsel generally agrees with the legal submissions for the Council as they relate to the framework for plan-making.
- 4.3 However, key statutory obligations are worth specific attention as they relate to HS3:³
 - (a) Section 15 No person may discharge a contaminant onto land where it may enter water unless the discharge is expressly allowed by a national environmental standard or other regulations.
 - (b) Section 30(1)(c) Council must control use of land for the purposes of:
 - (i) soil conservation;
 - (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water;
 - (iii) the maintenance and enhancement of ecosystems in water bodies and coastal water; and
 - (c) Section 30(1)(f) Council must control discharges of contaminants into or onto land, air or water and discharges of water into water.
 - Section 107 Council shall not grant a discharge permit allowing the discharge of a contaminant onto land where it may enter water if, after reasonable mixing, the discharge is likely to result in any conspicuous

² Legal submission on behalf of Greater Wellington Regional council for Hearing Stream One, 3 October 2024 ³ Resource Management Act 1991 (**RMA**)

change in the colour or visual clarity. Exceptions apply, including where the discharge is of a temporary nature.

- 4.4 'Contaminant' includes any substance that, when discharged into water, changes or is likely to change the physical condition of water.⁴ This definition includes sediment.
- 4.5 A series of national directives guide the implementation of these provisions.⁵ National direction identified in the forestry and vegetation clearance s 42A Report (s 42A Report) as being relevant to HS3 includes the NPS-FM and Resource Management (National Environmental Standards for Commercial Forestry) Regulations 2017 (NES-CF).⁶

NPS-FM

- 4.6 The objective of the NPS-FM bears repeating. It requires management of natural and physical resources that prioritises:
 - (a) First, the health and well-being of water bodies and freshwater ecosystems;
 - (b) Second, the health needs of people (such as drinking water);
 - (c) Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
- 4.7 All NPS-FM policies are relevant, but the following are particularly pertinent:

Policy 1 – Freshwater is managed in a way that gives effect to Te Mana o te Wai;

Policy 3 – Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments;

Policy 5 – Freshwater is managed (including through a National Objectives Framework) to ensure that the health and well-being of

⁵ RMA, s 67(3)

⁶ S 42A Report, from [27]

degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.

- 4.8 Part 3 of the NPS-FM sets out a non-exhaustive list of things that Council *must* do to give effect to the objective and policies. This includes:
 - (a) implementing the national objectives framework (NOF) by identifying freshwater management units (FMU);⁷
 - (b) identifying values and setting outcomes as objectives for each FMU;⁸
 - (c) identifying attributes and setting target attribute states (TAS) to achieve the environmental outcomes;⁹
 - (d) identifying limits (i.e. rules) on resource use that "will achieve" Appendix 2A TASs;¹⁰ and
 - (e) for Appendix 2B TASs, preparing an action plan for achieving TASs within a specified timeframe.¹¹
- 4.9 In giving effect to the NPS-FM, Council must use the best information available at the time. Council must not delay making decisions solely because of uncertainty about the quality or quantity of the information available and, if the information is uncertain, must interpret it in the way that will best give effect to the NPS-FM.¹²

NES-CF

4.10 The NES-CF regulates commercial forestry activities including afforestation, earthworks, harvesting and replanting. The regulations do not apply to vegetation clearance that is carried out before afforestation.¹³

⁷ NPS-FM, cl 3.8
⁸ NPS-FM, cl 3.9
⁹ NPS-FM, cls 3.10 and 3.11
¹⁰ NPS-FM, cl 3.12(1)
¹¹ NPS-FM, cl 3.12(2)
¹² NPS-FM, cl 1.6
¹³ NES-CF, cl 5(3)

- 4.11 For activities managed by the NES-CF, a rule in a regional plan may be more stringent if the rule gives effect to an objective developed to give effect to the NPS-FM, or any of policies 11, 13, 15, and 22 of the New Zealand Coastal Policy Statement 2010 (NZCPS).¹⁴
- 4.12 Where greater stringency is proposed, Council must include in its s 32 evaluation report an examination as to whether the proposal is justified in the circumstances of the region.¹⁵ The level of detail required to satisfy the s 32(4) 'justification test' has been considered by the High Court in *Rayonier New Zealand Ltd v Canterbury Regional Council* [2024] NZHC 1478.¹⁶ The Court held:
 - (a) Local factors, rather than matters generally of concern at a national level, must be examined. This required the panel to be satisfied that there was good reason arising from the circumstances to impose greater restrictions on plantation forest activities that have the potential to cause sediment discharges than those that appear in the NES-PF (now CF).¹⁷
 - (b) Evidence directly relevant to the region is required explaining why the nation-wide approach set out in the NES-CF is not sufficient to address the harm sought to be prevented by the proposed rules. Evidence should have been presented that compared the NES-CF provisions with the proposed rules and then, if a departure from the NES-CF was in the panel's view justified, reasons given as to why a different approach should be taken.¹⁸
- 4.13 These findings indicate the importance of justifying additional stringency in the context of the region to which the regulations apply.

Regional Policy Statement for the Wellington Region

4.14 The Regional Policy Statement for the Wellington Region 2013 (**RPS**) sets the direction of travel for the region. A decision to amend the RPS (**RPS Change 1**)

¹⁴ NES-CF, cl 6(1)

¹⁵ RMA, s 32(4)

¹⁶ Rayonier New Zealand Ltd v Canterbury Regional Council [2024] NZHC 1478

¹⁷ At [138]

¹⁸ At [170]

(including to introduce long-term visions for the two Whaitua via Variation 1) was made on 04 October 2024.

- 4.15 Council must give effect to the RPS and, until RPS Change 1 becomes fully operative, must have regard to RPS Change 1.¹⁹ Legal submissions on behalf of the Council outline the implementation requirements²⁰ but appear to have overlooked the general principle that more weight should be given to provisions the further along in the process a proposed policy statement is.²¹
- 4.16 The s 42A Report identifies the objectives and policies of the operative RPS and RPS Change 1 that are relevant to HS3. These are not repeated here. However, in relation to sediment control, EDS notes that, in accordance with the NPS-FM, the RPS Change 1 implements a marked shift away from measures that 'minimise' to measures that 'manage' effects and quite clearly promotes permanent (continuous cover) and preferably indigenous forestry to achieve TASs.²²

Plan Change 1

- 4.17 PC1 seeks to implement the NOF for two Whaitua. It identifies values and sets outcomes as objectives for each Whaitua. The Whaitua objectives can be broadly summarised as requiring the maintenance, or improvement where degraded, of groundwater, rivers, lakes and natural wetlands and their margins, in accordance with Policy 5 of the NPS-FM.
- 4.18 Suspended fine sediment (i.e. visual clarity) is identified in the NPS-FM as an Appendix 2A attribute that requires Council to set limits on resource use to achieve the TASs and support the achievement of Whaitua objectives.²³
- 4.19 Table B7 of Council's s 32 report identifies the sediment load reductions required to meet the TASs for visual clarity in the two Whaitua:²⁴

¹⁹ RMA, s 66(2)(a)

²⁰ Legal submission, above n 2, at [37]

²¹ *Re Otago Regional Council* [2021] NZEnvC 164 at [37]

²² See for example Policy 15, Objective CC.5 and Policy CC.6

²³ NPS-FM, Appendix 2A at Table 7

²⁴ Section 32 Report: Part B at p 54; Greer and others "Technical assessments undertaken to inform the target attribute state framework of proposed Plan Change 1 to the Natural Resources Plan for the Wellington Region" (2023) Report No. 2023-006, at p 9

Table B7: Sediment load reductions required to meet the visual clarity TAS								
Part-FMU	Target Attribute Site	Baseline clarity median (m)	Clarity target (m)	Baseline dSedNet mean annual TSS load (t/year)	TSS load reduction required to meet clarity target			
	т	NT TAS						
Ōrongorongo, Te Awa Kairangi and Wainuiomata small forested and Te Awa Kairangi forested mainstems	Whakatikei R. @ Riverstone	4	4	3,189	0%			
Te Awa Kairangi rural streams and rural mainstems	Mangaroa R. @ Te Marua	1.5	2.22	10,965	-51%			
Te Awa Kairangi urban streams	Hulls Ck adj. Reynolds Bach Dr.	1.2	1.2	181	0%			
Te Awa Kairangi lower mainstem	Hutt R. @ Boulcott	2.4	2.95	102,303	-24%			
Waiwhetū Stream	Waiwhetū S. @ Whites Line E.	1.1	1.1	228	0%			
Wainuiomata urban streams	Black C. @ Rowe Parade end	1.3	2.22	382	-50%			
Wainuiomata rural streams	Wainuiomata R. DS White Br.	2.1	2.22	12,243	-7%			
Kaiwharawhara Stream	Kaiwharawhara S. @ Ngaio	3.2	3.2	290	0%			

3.2

2.22

3.2

1.6

2,159

4,437

0%

-34%

at load redu din Table

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TAOP TAS								
Pouewe	Horokiri Stream @ Snodgrass	2.3	2.3	764	0%			
Takapū	Pāuatahanui S. @ Elmwood Bridge	1.8	2.22	2311	-25%			
Te Riu o Porirua	Porirua S. @ Milk Depot	1.7	1.7	1705	0%			
Taupō	Taupō S. @ Plimmerton Domain	1.2	1.2	15	0%			
Wai-O-Hata	Duck Ck at @ Tradewinds Dr. Br.	1.2	1.2	526	0%			

Gorge

Karori S. @ Mākara Peak

Mākara S. @

Kennels

Wellington urban

Parangarahu

catchment streams

and South-west coast rural streams

- 4.20 For some part FMUs, the sediment load reductions required to meet TASs are significant. In others, the TASs are set to 'maintain' visual clarity at the baseline.
 EDS agrees that 'maintain' means maintain at the actual level rather within an attribute state band.²⁵
- 4.21 To achieve the visual clarity TASs, PC1 proposes a set of limits (i.e. rules) on land use activities that are known to cause sedimentation. In relation to HS3, this includes rules (and policies to guide their implementation) on earthworks, rural land use, commercial forestry and other vegetation clearance. In HS2, Council recommended updates to the TASs above, but EDS understands this has not significantly affected the sediment load reductions required. The policies and rules that have been proposed in PC1 to achieve TASs respond to statutory and policy requirements and community feedback, and are supported by the best information presently available.

5. ISSUES

Appropriateness of identification and mapping of erosion risk land

- 5.1 To support land use management, PC1 identifies and maps areas of high erosion risk for each land use category. These maps combine shallow landslide and surficial erosion risk data to produce relative 'highest' and 'high' erosion risk layers.
- 5.2 In its original submission, EDS supported the identification and mapping of erosion risk land, and considered the maps were appropriate to support land-use management, particularly because of the well-documented issues in the Wellington context with the existing NES-CF erosion susceptibility calculation (ESC) method.²⁶
- 5.3 Other submitters have raised concerns as to the appropriateness of relying on the erosion risk maps. Council has also identified various limitations and these are addressed in the s 42A Report, which recommends the maps be amended so that they no longer guide land use management in policies and rules.

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²⁵ Greer and others, above n 24, at p 10

²⁶ S 42A Report, at [195]

- 5.4 EDS acknowledges the limitations that have been outlined. However, in some respects, EDS considers these have been overstated:
 - (a) The erosion risk maps account for a range of inputs, not just slope angle as per the existing erosion prone land definition in the NRP. As such, the maps are predicted to be more accurate than other models.²⁷ While some inputs are not incorporated that could be – e.g. underlying geology – these inputs are also not included in the more simplistic NRP erosion categorisations that are based solely on slope angle.
 - (b) It is acknowledged that the risk maps are likely to be relatively conservative. That is, they predict an area larger than if additional inputs were included.²⁸ Irrespective, EDS considers some conservatism is appropriate given the potentially significant influence of landslides and surface erosion on achieving visual clarity TASs.
 - (c) As to the alignment between 'high erosion risk land' and the definition of 'Highly erodible land' in RPS Change 1, EDS considers it is appropriate for PC1 to incorporate both mass-movement (e.g. shallow landslides) and surficial erosion in risk mapping because this recognises the influence of surface erosion on sediment production in the two Whaitua. However, EDS does not consider there to be evidence that "the main erosion risks in these Whaitua are surficial erosion".²⁹ Nor is surficial erosion the primary input to the erosion risk maps. To the contrary, there is a high level of correlation between land at risk of shallow landslides and surficial erosion and, in places where high surficial erosion rates are estimated for pixels that are not deemed to be at risk of land sliding, these pixels have been precluded from the erosion risk layer.³⁰ Council is entitled to manage more than just 'Highly erodible land' as defined in RPS Change 1 and combining surficial and shallow landslide erosion risk is recognised as being easier to

²⁸ At p 9

 $^{^{27}}$ Stu Easton, Tom Nation and James Blyth "Erosion Risk Mapping for Te-Awarua-o-Porirua and Te-Whanganui-a-Tara", 11 August 2023, at p 8

²⁹ S 42A Report, at [168]; There are substantial limitations in the assessment undertaken in Appendix A to the Technical Evidence of Mr Blyth, 15 April 2025, for instance the lack of modelling on 'event loads' or impacts from forestry harvest, that make it an unreliable indicator of relative erosion rates.

³⁰ Stu Easton and others, above n 27, at p 7

understand and disseminate than having two separate layers (for mass movement, and for surficial erosion).³¹

- 5.5 Notwithstanding the above, EDS understands that the erosion risk maps were only intended to guide spatial land use controls and it may not be appropriate for them to preclude site specific assessment.³² EDS also acknowledges the limitations that accrue from adopting a 'relative' erosion risk approach, and the potential inefficiencies from pixelation. EDS agrees that further work needs to be undertaken to more "fulsomely" understand the influence and impacts of commercial forestry.³³ As such, EDS generally supports recommended methods M44A and M44B as discussed below.
- 5.6 However, in the meantime, EDS does not agree that the use of high erosion risk maps to support land use management should be sidelined completely. Council is obligated to use the best available information and EDS submits that, on balance, the erosion risk maps provide the best information currently available on erosion risk in the two Whaitua. This has been recognised in the recommendations for rural land-use, which uses the updated 'potential' high erosion risk map to inform land-use management. A similar approach could be adopted for commercial forestry.

Management of commercial forestry

- 5.7 As noted above, the NPS-FM requires Council to set TASs for visual clarity to meet freshwater outcomes. Council must implement limits on land use that "will achieve" TASs for visual clarity.³⁴
- 5.8 The existing NRP relies on the NES-CF to manage commercial forestry activities. Council has identified that the NES-CF alone may not adequately manage commercial forestry activities to achieve visual clarity TASs and, as such, PC1 includes policies and rules that manage commercial forestry more stringently than the NES-CF.

³² At p 9

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³¹ Stu Easton and others, above n 27, at p 2

³³ S 42A Report, at [359]

³⁴ NPS-FM, cl 3.12(1)(a)

- 5.9 PC1 manages commercial forestry activities depending on the erosion risk classification of the land (as per above). Broadly speaking, PC1:
 - (a) controls commercial forestry where TASs and a range of other conditions are achieved;
 - (b) manages commercial forestry where the controlled activity conditions cannot be met; and
 - (c) prohibits commercial forestry from establishing or continuing beyond the harvest of existing forests, on highest erosion risk land.
- 5.10 EDS generally supported this approach in its original submission, subject to further improvements that it considered necessary to achieve environmental outcomes.
- 5.11 However, the s 42A Report has recommended the above approach be 'rolled back'. In particular, the Report recommends amendments that remove the prohibition on forestry on highest erosion risk land and "to provide that forestry activities (regardless of the erosion risk) be able to be undertaken, provided an applicant can demonstrate that *adverse effects from the management and harvest of the forest can appropriately protect water quality*" [emphasis added].³⁵ More specifically, the report recommends restricted discretionary activity status for all commercial forestry activities in part FMUs where the most recent monitoring shows that TASs for visual clarity are not met, provided adverse effects are 'minimised'.
- 5.12 It is not entirely clear how "adverse effects" can "appropriately protect water quality". Some amendments to the management framework may be appropriate to reflect the limitations associated with erosion risk mapping, but the s 42A recommendations go too far.

Failure to use best available information

5.13 Council must use the best information presently available.

³⁵ S 42A Report, at [181]

- 5.14 In the NPS-FM context, best available information means, if practicable, using complete and scientifically robust data. Where such information is not available, local authorities must prefer sources of information that provide the greatest level of certainty, and must take all reasonable steps to reduce the level of uncertainty. If the information is uncertain, local authorities must interpret it in the way that will best give effect to the NPS-FM.
- 5.15 It is not open for Council to disregard information simply because it faces limitations. In fact, scientific information is almost always limited in some way. Nor is it open for Council to disregard information because it considers better information might be able to be obtained in the future. Council's obligation to use complete and scientifically robust information has existed for several years it is no excuse to say that it does not have the information that it is legally obligated to obtain, nor is there an excuse for having failed to obtain it thus far. Irrespective, the NPS-FM requires Council to use the available information in a way that will best give effect to the NPS-FM.
- 5.16 EDS submits that, by removing spatial restrictions on commercial forestry activities (based on erosion risk maps), the recommendations fail to make use of erosion risk mapping in a way that would best give effect to the NPS-FM. It is inappropriate for the same considerations and legal tests (i.e. restricted discretionary) to apply to activities where the best available information shows that the risks are significantly higher.

The recommended limits will not achieve TASs for visual clarity

5.17 Contrary to the NPS-FM, the recommendations do not include limits that "will achieve" TASs for visual clarity.

TASs that are set to 'maintain'

5.18 The s 42A Report recommends management of commercial forestry activities only where the most recent monitoring shows TASs for visual clarity are not being met. As noted above at [4.20], visual clarity TASs for several part FMUs are set at 'maintenance'. If the s 42A recommendations are adopted, management of commercial forestry under the NRP in these catchments would only be triggered if TASs are no longer being maintained.

- 5.19 This approach disregards the nature of sediment loss from commercial forestry activities. Unlike pastoral land use, where sediment discharge is generally more continuous (although it can surge during large-scale rain events), sediment discharge from commercial forestry is more episodic. As noted in the evidence of Mr Blyth, sediment loss attributable to commercial forestry is significantly greater in the years post-harvest. Mr Reardon's evidence is that sediment loss "is most extreme in the four years before and after harvest".³⁶ If monitoring undertaken during the mature stage of a forestry block's lifecycle indicates that TASs for visual clarity are being maintained, the recommended approach would preclude Council from managing the block's harvest (and associated sediment loss). Instead, such activities and effects would be managed under the NES-CF. If subsequent post-harvest TAS monitoring indicates that the NES-CF may be inadequate (because TASs are no longer being maintained) the damage will already have been done; Council will have failed to achieve its 'maintenance' objectives. This is particularly relevant in the Wellington context where substantial commercial forestry harvesting is anticipated in the next five years.³⁷
- 5.20 EDS submits that the requirement to achieve TASs by 2040 applies where TASs are presently not being achieved and mitigations are required. Conversely, for those visual clarity TASs that are set to 'maintain', maintenance must occur continuously.³⁸ It is not open to Council to justify exceedances in TASs 0-5 years post-harvest on the basis that TASs are maintained or even improved during years 5-30. Such an approach would be inconsistent with the Court's principled reasoning in *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612, and would not give effect to cl 3.11(5)(a) and Policy 5 of the NPS-FM.³⁹
- 5.21 To ensure TASs for visual clarity are maintained, Council needs to retain some discretion to manage commercial forestry activities. EDS submits a restricted discretionary rule would be appropriate to manage commercial forestry where TASs for visual clarity are being met.

³⁶ Technical Evidence of Evidence of Mr Reardon, 15 April 2025, at [39]

³⁷ At [13]-[20]

³⁸ NPS-FM, cl 3.11(5)(a)

³⁹ Environmental Law Initiative v Canterbury Regional Council [2024] NZHC 612, at [56] and [57]

TASs that require improvement

- 5.22 The s 42A Report recommends restricted discretionary activity status and associated requirements to 'minimise' erosion for commercial forestry in those part FMUs where visual clarity TASs are not met. EDS submits that such an approach will not sufficiently reduce sedimentation from commercial forestry to achieve TASs for visual clarity, contrary to the NPS-FM.⁴⁰
- 5.23 As noted above at [4.20], the visual clarity TASs for several part FMUs require significant sediment reductions. EDS agrees with Dr Greer that there is adequate scientific evidence linking sediment losses from commercial forestry to exceedances of the suspended fine sediment TASs.⁴¹ EDS also agrees with the evidence presented in the s 42A Report on behalf of Council as to the unsuitability of the NES-CF in the Wellington context.⁴² In particular, the evidence that NES-CF is not suitable to obtain an informed understanding of the potential environmental risks during some forestry activities. In the context of the Wellington region, where substantial intervention is required across multiple land-uses to achieve TASs, and where substantial forest harvest is expected in the near future, EDS submits that additional stringency to manage commercial forestry activities is justified.
- 5.24 The s 42A Report recommends prohibited and discretionary activity statuses for commercial forestry be 'rolled back' into a single restricted discretionary classification. Under the recommended approach, commercial forestry could be consented irrespective of the erosion risk of the land. The s 42A Report acknowledges that this approach would not give effect to RPS Change 1,⁴³ in particular Policy CC.6, which requires avoidance of plantation forestry on 'Highly erodible land'. This is justified on the basis that the erosion risk mapping undertaken for PC1 to date is not refined enough to support provisions to give effect to Policy CC.6 as the mapped areas of highest erosion risk land notified in PC1 do not correlate with the RPS definition of highly erodible land. For the

⁴⁰ NPS-FM, cl 3.12(1)

⁴¹ Technical Evidence of Dr Greer, 15 April 2025, at [56]

⁴² S 42A Report, at [193]-[203]

⁴³ S 42A Report, at [166]-[167]

reasons outlined at [5.4] and [5.13]-[5.16], these concerns are overstated and the high risk mapping must not be discarded.

- 5.25 As recommended, the policies that guide implementation of the restricted discretionary rule require sediment from commercial forestry to be 'minimised'. Minimise in the NRP means "Reduce to the smallest amount reasonably practicable." EDS submits that, in high risk areas, effects need to be 'managed' rather than 'minimised'. On highest erosion risk land, minimisation of effects will not be sufficient to adequately contribute to the achievement of TASs for visual clarity.
- 5.26 EDS also submits that the 'minimise' requirement is inconsistent with s 107, which prevents Council from granting a discharge permit for the discharge of contaminants (including sediment) in circumstances which may result in that contaminant entering water if, after reasonable mixing, the discharge would result in any conspicuous change in the colour or visual clarity. The exceptions in s 107(2) do not apply to commercial forestry activities. It is not the case that minimisation of effects will always prevent changes in visual clarity. As noted by Mr Reardon, "Sediment discharge is unavoidable and obvious during periods of wet weather."⁴⁴ This is likely to be particularly pronounced on high erosion risk land. In these cases, Council is required by law to decline consent but the recommended policies do not acknowledge this.
- 5.27 EDS submits that the policy and rule framework recommended to manage commercial forestry in part FMUs where TASs for visual clarity are not met, needs amendment. Specifically, on highest erosion risk land, management (including avoidance) of effects rather than minimisation would be more aligned with Policy CC.6 of RPS Change 1, would appropriately utilise the best available information in a way that best gives effect to the NPS-FM, and is necessary to recognise Council's obligations under s 107.
- 5.28 Such management should include avoidance directives where the RPS Change 1 'Highly erodible land' definition is met and, as per EDS's original submission, direction should be provided that requires setbacks, alternative harvesting methods where the erosion risk requires it, and spatial/temporal harvesting

⁴⁴ Evidence of Mr Reardon, above n 36, at [61]

limits. This is necessary because, at present, sub-part 6 of the NES-CF does not include any provisions that limit clearcut size or the spatial and temporal distribution of clearcut areas in any zone other than red nor do they specify the methods to be used for harvesting in different risk situations. And, in the opinion of Mr Reardon, the NES-CF does not require sufficient setbacks on steep erosion-prone land.⁴⁵ Mr Reardon also says that there are "multiple alternative harvest strategies" that could be promoted to "avoid or minimise" disturbance in high erosion risk areas.⁴⁶ In his opinion, the "incorrect choice of harvest system has been one of the key contributors to the poor environmental performance I have observed within the region and is typically driven by the lowest cost solution to harvesting of the block, generally at the expense of better environmental outcomes."⁴⁷ On high erosion risk land, better management techniques are necessary to support Council in achieving TASs for visual clarity.

5.29 EDS refers to the direction of travel outlined in the objectives and policies of RPS Change 1, which supports the approach taken in PC1, and the priority that must be given to the health and wellbeing of waterbodies and freshwater ecosystems.

Management plans

- 5.30 EDS does not support the recommended replacement of Schedule 34 with Schedules 34A, 34B and 34C.
- 5.31 The s 42A Report attempts to justify its recommendations because it says the replacement schedules require more detail than the notified Schedule 34 and are therefore more effective. The s 42A Report also attempts to justify the amendments on the basis of minimising costs for landowners.
- 5.32 Traditionally, more detail usually requires more costs. In this case, it is the type of detail that matters, rather than the quantity. EDS submits that the type of detail required in Schedules 34A, 34B and 34C will be less effective in achieving freshwater outcomes and statutory requirements including because:

⁴⁵ Evidence of Mr Reardon, above n 36, at [50]

⁴⁶ At [66]

⁴⁷ At [73] and [25]

- (a) They do not require the consent applicant to demonstrate how discharge standards will be met in accordance with s 107;
- (b) They do not require the consent applicant to demonstrate that the risk of sediment discharge will not increase on high risk land;
- (c) They do not provide for the progressive reduction and cessation of commercial forestry on high erosion land nor provide for restoration and revegetation with appropriate permanent woody species;
- (d) They do not require details on the location of any site or river included in the Schedules B, C, F1 and F3 of the NRP that is within, or adjacent to, the plantation forestry; and
- (e) They do not require details on the location of the existing *and proposed* plantation forestry operations.
- 5.33 This type of information is unlikely to be difficult to provide. Foresters should be providing much of this information anyway in accordance with good management practice and to support achievement of consent conditions but, in many cases, they do not.⁴⁸ As such, EDS submits that requiring the provision of this information will not significantly increase costs but it will increase efficiency and effectiveness in achieving freshwater outcomes.⁴⁹ Again, Council is obligated to adopt measures that, as a first priority, protect freshwater health.

Phasing out commercial forestry on high risk land is appropriate

- 5.34 Several submitters identify what they consider perverse or unintended consequences that may arise if commercial forestry is phased out on high risk land. These are addressed in the s 42A Report and are relied upon to justify the recommended 'roll back' of commercial forestry regulation in PC1.
- 5.35 EDS acknowledges the risks of certain unintended outcomes arising but Council needs to address these through the NRP management framework rather than using them to justify inaction. For example:

⁴⁸ S 42A Report, at [196]; Evidence of Mr Reardon, above n 36, at [74]

⁴⁹ RMA, s 32(1)(b)

- (a) The risk of vegetation clearance causing long term increases in sediment loss through the facilitation of a land use change can be appropriately managed through other policies and rules in PC1.⁵⁰ For instance, as proposed, the required Plantation Forestry and Sediment Management Plan requires highest erosion risk land to be restored and revegetated with appropriate permanent woody species.⁵¹
- (b) While preventing forest harvest beyond the current harvest cycle may conceivably lead to perverse outcomes because forest owners may not have the economic incentive to maintain or enhance land subject to forestry activity, this could be addressed, for example, by including policy direction to avoid replanting where the harvest of the existing block results in adverse effects. This would act as a strong incentive for landowners to adopt and actually implement best practice to give themselves the best chance of being able to renew their consents.
- 5.36 The possibility of other risks, for example that forestry is forced lower down the catchments, have been rejected in the evidence of Mr Reardon.⁵²
- 5.37 Finally, when giving effect to the NPS-FM and RPS Change 1, Council must be careful not to take a short-term approach because Wai Ora is inherently a long-term objective. As acknowledged in the s 42A Report, the evidence of Mr Blyth is that permanent forests provide the best results in terms of sediment loss and therefore are the most appropriate land cover for long term protection from erosion and sediment risks.⁵³

M44 and M45

5.38 As noted above, EDS generally supports recommendations for new methods M44 and M45. However, EDS is concerned that the development of standard conditions of consent may preclude site specific adjustments that will be needed on higher erosion risk land; for example, the use of alternative, low-intensity harvesting methods or additional setbacks suggested above at [5.28].

⁵⁰ Evidence of Dr Greer, above n 41, at [40]

⁵¹ PC1, Schedule 34 B4

⁵² Evidence of Mr Reardon, above n 36, at [20]

⁵³ S 42A Report, at [165]

Vegetation clearance

- 5.39 PC1 includes policies and rules for vegetation clearance not otherwise managed under the NES-CF. The s 42A report makes several recommendations that essentially re-produce existing NRP regulations for vegetation clearance.
- 5.40 Subject to the points made above on the appropriateness of high erosion risk mapping, and acknowledging the recommended approach is substantially 'weaker' than the notified vegetation clearance framework, EDS generally accepts the evidence and recommendations relating to vegetation clearance presented in the s 42A Report. However, this is subject to some additional tweaks that would better support the achievement of freshwater objectives.
- 5.41 In relation to permitted activity rules, EDS supports amendments that introduce setbacks and require consideration of effects on the coastal marine area. To better align with the new restricted discretionary rules proposed, EDS submits that activities should not be permitted in the coastal marine area and should have a setback of at least 10m from surface water bodies. Crucially, the standards in (a)(i)-(iii) must also apply to (b) and (c), as required by s 107 of the RMA and the NPS-FM.

6. CONCLUSION

6.1 Land-use limits are necessary and justified to achieve visual clarity TASs. This includes rules that regulate commercial forestry activities over and above the existing NES-CF. These rules must use the best available information in a way that best gives effect to the NPS-FM. EDS submits that erosion risk must inform the management approach adopted for commercial forestry. Limits must also apply to commercial forestry activities where TASs for visual clarity are achieved, to ensure visual clarity is maintained. Consideration of alternative harvest methods, setbacks or any other measure to support achievement of TASs are justified and should be provided for.

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