

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2024-CHC-27

**I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

IN THE MATTER

of an appeal under clause 14(1) of the First
Schedule of the Resource Management Act
1991

BETWEEN

**Rayonier Matariki Forests, City Forests
Limited, Ernslaw One Limited, Port Blakely
New Zealand Limited (collectively “Forestry
Appellants”)**
Appellant

AND

Otago Regional Council
Respondent

**NOTICE OF WISH OF DIRECTOR-GENERAL OF CONSERVATION TUMUAKI AHUREI
TO BE A PARTY TO APPEAL
7 June 2024**

Director-General of Conservation Tumuaki Ahurei

Solicitor Rōia: Pene Williams
Department of Conservation | Te Papa Atawhai
Private Bag 4715, Christchurch 8011
Phone Waea: (027) 408 3324
Email Īmera: pwilliams@doc.govt.nz

NOTICE OF WISH TO BE A PARTY TO PROCEEDINGS**To:**

The Registrar
Environment Court
Christchurch

1. The Director-General of Conservation Tumuaki Ahurei (D-G) wishes to be a party to the following proceedings:
**Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited,
Port Blakely New Zealand Limited (collectively “Forestry Appellants”) v
Otago Regional Council
ENV-2024-CHC-27**
2. The D-G received notice of this appeal on 15 May 2023.
3. The D-G made a submission on the matters included in the proposed Regional Policy Statement (RPS). The D-G has an interest in this proceeding that is greater than that of the general public.
4. The D-G is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991.
5. The D-G is interested in part of the appeal as described in the table attached to this notice in Schedule 1.
6. In relation to the general reasons for the appeal, the Forestry Appellants say that commercial forestry is regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (NES-CF), and there is no need to depart from the NES-CF framework in the Otago Region. The Appellants further say that, as there has been no evaluation to justify stricter measures in the region, the parts of the RPS that impose more stringent measures are beyond the Regional Council’s jurisdiction.
7. The D-G opposes these general reasons and in reply says:
 - a. While it is correct that plans cannot have rules that are more stringent than a National Environmental Standard without evaluation, the RPS is not a plan, does not make rules, and it is not subject to the evaluation requirement.

- b. The purpose of the RPS is to achieve the sustainable management of natural and physical resources in the region by providing an overview of regional issues and establishing policies and methods to achieve integrated management.
 - c. Wilding conifer and other pest species are a significant concern in the Otago region, and it is appropriate for the RPS to provide policies and methods to manage this risk.
 - d. It will be for Councils making decisions on Regional Plans and District Plans as they have regard to the RPS to evaluate and decide whether there is evidence to justify more stringent measures than the NES-CF in those plans.
8. In relation to specific parts of the appeal, the D-G supports or opposes the relief sought in the appeal for the reasons given in the table in Schedule 1.
9. The D-G agrees to participate in mediation or other alternative dispute resolution of the proceedings.



Pene Williams

Counsel for the Director-General of Conservation Tumuaki Ahurei

Dated 7 June 2024

Address for service: Department of Conservation | Te Papa Atawhai
Private Bag 4715, Christchurch 8011
Phone Waea 027 408 3324

Email Īmera: pwilliams@doc.govt.nz
cwarnock@doc.govt.nz

Schedule 1 – Parts of appeal joined, position and reasons

Provision appealed	Relief sought	Support/ Oppose	Reasons
Part 1 – National Direction instruments	<u>Amend</u> as follows: NESs must be observed and enforced by local authorities. <u>Rules in plans made by local authorities may not be more stringent than a standard unless the more stringent rule is shown to be justified by evaluation in the circumstances of each region or district in which the rule would have effect.</u> The following relevant NESs are currently in force:	Support	The D-G agrees the wording could be revised.
SRMR-I10 – Economic and domestic activities in Otago use natural resources but do not always properly account for the environmental stresses or the future impacts they cause	<u>Amend</u> as follows: <u>When development and primary production are poorly managed, sediment from these activities can</u> Sediment from poorly managed development and primary production activities <u>flows flow</u> into streams and builds up in the coastal environment, smothering kelp forests and affecting rich underwater habitats. <u>Water</u> abstraction and wastewater and stormwater discharges adversely affect the natural environment, cultural and amenity values, and recreation. ...	Oppose	While the NES-CF may provide controls for sedimentation from commercial forestry, the Issue is dealing with sedimentation effects from all development and primary production activities.
Part 3 – CE-P3 – Coastal water quality Clause (5)	<u>Delete</u> subclause (5) Manage water quality in the coastal environment by: ... (5) controlling activities outside the coastal marine area that have an effect on coastal water quality, ...	Oppose	The RPS looks to manage effects of all activities outside the coastal environment on coastal water quality, consistent with the New Zealand Coastal Policy Statement (NZCPS), especially Policy 21. There is nothing to suggest this could constrain forestry without justification.
CE-M3 – Regional plans	<u>Amend</u> (4)(d)(ii) regarding the suggested reference to NES-CF:	Oppose	The NES-CF provisions recognise that harvesting is a high-risk activity for sedimentation which must be managed. It is

Provision appealed	Relief sought	Support/ Oppose	Reasons
	<p>Otago Regional Council must prepare or amend and maintain its <i>regional plans</i> no later than 31 December 2028 to:</p> <p>...</p> <p>(4) manage the <i>discharge of contaminants</i> into <i>coastal water</i> to achieve limits or targets for water quality by:</p> <p>...</p> <p>(d) reducing the <i>discharge</i> of sediment by:</p> <p>...</p> <p>(ii) controlling the impacts of vegetation removal on sedimentation (in <u>excluding</u> harvesting plantation forestry <u>undertaken in accordance with the NESCF</u>), and...</p>		<p>appropriate for the RPS to provide for regional plans to assess this significant risk which also gives effect to the NZCPS. If a more stringent rule is proposed this will need to be justified through the plan change process. The proposed amendment would remove any future evaluation opportunity.</p>
CE-M4 District plans	<p><u>Amend</u> to clarify this does not apply to commercial forestry by addition to subclause (3):</p> <p><i>Territorial authorities</i> must prepare or amend and maintain their <i>district plans</i> to:</p> <p>...</p> <p>(3) control the location and scale of earthworks, mining, and vegetation planting, modification and removal in the coastal environment (outside the <i>coastal marine area</i>),. <u>This provision does not apply to commercial forestry activities.</u></p>	Oppose	<p>This would fail to achieve the purpose of sustainable management and Part 2 RMA. Wilding pest species are a significant issue in the Otago region. District Councils will have to evaluate the possible imposition of more stringent rules as part of plan change processes. It would be inappropriate to exclude commercial forestry and forestall any consideration.</p>
LF-LS-P16A – Managing pests	<p><u>Delete</u> LF-LS-16(1)(a) and (b), and <u>insert</u> new subclause (5):</p>	Oppose	<p>Part 2 NES-CF is consistent with LF-LS-16A and there is no need to delete the provision. Inserting the new subclause</p>

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	<p>Reduce the impact of <i>pests</i>, including <i>wilding conifers</i>, by:</p> <p>(1) avoiding afforestation and replanting of plantation forests with wilding conifer species listed in APP5 within:</p> <p>(a) areas identified as outstanding natural features, outstanding natural landscapes, or significant natural areas, and</p> <p>(b) buffer zones adjacent to the areas listed in (a) where it is necessary to protect those areas,</p> <p>...</p> <p><u>(5) For the avoidance of all doubt, this provision does not apply to commercial forestry activities already regulated under Part 2 of the NES-CF.</u></p> <p><u>OR</u> in the alternative clarify this provision does not apply to Commercial Forestry regulated under Part 2 NES-CF.</p>		<p>would remove any consideration of commercial forestry activities which are an ongoing contributor to wilding conifers. Any more stringent management proposed would need to be evaluated as part of future plan processes.</p>
<p>LF-LS-M12 – District plans</p>	<p><u>Amend</u> to disapply this to activities regulated under NES-CF by inserting new subclause (10)</p> <p><i>Territorial authorities</i> must prepare or amend and maintain their <i>district plans</i> no later than 31 December 2026 to:</p> <p>(1) manage <i>land use</i> change by:</p> <p>(aa) avoiding the planting of <i>pest plants</i> in accordance with LF-LS-P16A,</p> <p>...</p> <p><u>(10) For the avoidance of all doubt, this provision does not apply to commercial forestry activities already regulated under Part 2 of the NES-CF.</u></p>	<p>Oppose</p>	<p>Part 2 NES-CF is consistent with LF-LS-16A and there is no need to delete the provision. Inserting the new subclause would remove any consideration of commercial forestry activities which are an ongoing contributor to wilding conifers. Any more stringent management proposed would need to be evaluated as part of future plan processes.</p>

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LF-LS-M13 – Management of beds and riparian margins	<p><u>Insert</u> new subclause (5):</p> <p><u>(5) For the avoidance of all doubt, this provision does not apply to commercial forestry activities regulated under Part 2 of the NES-CF.</u></p>	Oppose	Riparian margins and beds are to be protected as a matter of national importance under s6 RMA. Disapplication to activities regulated by the NES-CF is inappropriate without further evaluation and would not provide for sustainable resource management.
ECO – generally	<p><u>Amendments as necessary</u> to disapply provisions that further regulate wilding trees for activities undertaken in accordance with the NES-CF</p>	Oppose	Disapplication to activities regulated by the NES-CF without further evaluation is inappropriate as this may not provide for sustainable resource management in the Region.
ECO-P1 – Kaitiakitaka	<p><u>Delete</u> reference to “enable” in chapeau of policy.</p> <p><u>Delete</u> ECO-P1(3), Alternatively <u>amend</u> by deleting “facilitating” and replace with “encourage where practicable”: <u>(3) facilitating encourage where practicable</u> access to and use of <i>indigenous biodiversity</i> by Kāi Tahu, including mahika kai, according to tikaka.</p>	Oppose	<p>“Enable” was inserted to give effect to the National Policy Statement for Indigenous Biodiversity (NPSIB) in particular clauses 3.2 and 3.3.</p> <p>Facilitation does not equate to requiring access. This clause gives effect to NPSIB policy 2 and clause 3.3</p>
ECO-P3 – Protecting <i>significant natural areas</i> and taoka	<p>Generally, oppose any attempt to regulate adverse effects of forestry on indigenous biodiversity that go beyond Policy 12 and clause 3.14 (Forestry and SNAs) and cl 3.16 (indigenous biodiversity outside SNAs) of the NPSIB.</p> <p><u>Amend</u> to disapply the precautionary approach to those commercial forestry activities that are already regulated under Part 2 of the NES-CF, the effects of which are already well understood.</p> <p><u>Delete</u> ECO-P3(3) or alternatively amend in the following way:</p>	Oppose	The RPS implements the NPSIB and provides for sustainable management of resources in the region. The precautionary approach in ECO-P3(3) is consistent with NPSIB policy 12 and NES-CF.

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	(3) prior to significant natural areas and indigenous species and ecosystems that are taoka being identified and mapped in accordance with ECO-P2, adopt a precautionary approach towards activities <u>that have adverse effects that are uncertain,</u>		
ECO-M5 – <i>District plans</i>	<u>Delete or amend</u> any part of the provision that regulates commercial forestry and indigenous biodiversity to the extent that it is more stringent than clauses 3.14 and 3.16 of the NPSIB, whilst bearing in mind Policy 12.	Oppose	The relief sought is unclear. The RPS sets policy direction to sustainably manage natural and physical resources which a District plan must give effect to. If a plan proposes to impose more stringent rules than the NES-CF this must go through an appropriate evaluation at that time.