

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE GORE
DISTRICT COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991 (**RMA** or
the Act)

AND

IN THE MATTER OF

Of Hearing of Submissions and Further
Submissions on the Proposed Gore District
Plan

AND

IN THE MATTER OF

Submissions and Further Submissions on the
Proposed Gore District Plan by Port Blakely
Limited (**Port Blakely**)

**MEMORANDUM OF COUNSEL FOR
PORT BLAKELY LIMITED IN RESPONSE TO MINUTE 16: RURAL ZONES –
AFFORESTATION AND THE SECTION 42A REPORT IN RESONSE TO MINUTE 16**

Dated: 14 October 2024

Presented for filing by:
Shona Walter
Saunders & Co
PO Box 18, Christchurch
T 022 400 6676
shona.walter@saunders.co.nz

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PORT BLAKELY LIMITED IN RESPONSE TO MINUTE 16: RURAL ZONES –
AFFORESTATION AND THE SECTION 42A REPORT IN RESONSE TO MINUTE 16**

TO: The Hearings Panel

Introduction

- 1 This memorandum is filed on behalf of Port Blakely Limited (**Port Blakely**) in response to Minute 16 which addresses (among other matters) potential gaps in the notified plan regarding the management of afforestation activities in the Gore District.
- 2 The Minute requests that the s42A reporting officer provide amended wording and advice regarding these matters. At paragraph 4.1(2) the Minute directs submitters to provide a memorandum providing their response to this Minute and the corresponding advice of the s42A reporting officer.
- 3 Accordingly, this memorandum responds to the memorandum filed by the s42A reporting officer dated 18 September 2024 (**Council memo**).

Port Blakely's submission on the Proposed Plan

- 4 Port Blakely owns and manages the Kaiwera forest, which is located partially in the Gore District and partially in the Southland District. Port Blakely filed a submission on the Proposed Gore District Plan, seeking (amongst other things) to align the Proposed Plan with the NES-CF and remove or amend rules stricter than the NES-CF that do not meet the jurisdiction or justification test of the RMA (discussed below).

Aligning a district plan with the NES-CF

- 5 Local authorities are obligated to take certain steps to align their plans with the NES-CF and to make it clear to plan users in what circumstances the NES-CF applies versus provisions in a regional or district plan.
- 6 Local authorities can include plan rules that are more stringent than the NES-CF if those rules meet the requirements of Regulation 6 of the NES-CF (the jurisdiction test).

- 7 If a local authority wishes to include a plan rule that is more stringent under Regulation 6, then it must undertake an evaluation under section 32(4) of the RMA to specifically consider whether a more stringent rule is justified in the context of the region/district (the justification test).
- 8 For all other plan rules that impact forestry but are not covered by the circumstances in Regulation 6, local authorities are required to identify if those rules duplicate or conflict with the NES-CF and remove that duplication or conflict in accordance with section 44A of the RMA.
- 9 The recent High Court decision *Rayonier New Zealand Ltd v Canterbury Regional Council* (attached at **Appendix A**), explains why decision makers are required to undertake a s32(4) analysis:²

[166] ...in this case, it is important to recognise that the s 32(4) requirement for stringency creates an exception to the general hierarchy attached to statutory planning documents, namely that national standards take precedence over regional rules. It is also important to recognise the background to the NES-PF which was promulgated to avoid forestry companies, such as the appellants, having to deal with different rules about the same topics throughout New Zealand.

[168] The fact that the stringency assessment is a departure from the normal rules regarding the hierarchy of statutory planning documents means that, in my view, greater care is required to be taken by a decision-maker when assessing stringency and a more careful reasoning process is required than that which was undertaken by the panel in this case.

- 10 The following passage from the *Rayonier* decision sets out the degree of reasoning and analysis required in the s32(4) analysis when a planning document seeks to impose stricter requirements than the NES-CF:³

[170] ... In my view, at the very least, there should have been evidence directly relevant to the Canterbury situation, explaining why the nation-wide approach set out in the NES-PF was not sufficient to address the harm sought to be prevented... There should have been evidence comparing the NES-PF provision with the proposed rules. Then, if a departure from the NES-PF was in the panel's view justified, reasons as to why a different approach should be taken ought to have been set out.

¹ *Rayonier New Zealand Ltd v Canterbury Regional Council* [2024] NZHC 1478

² At paragraphs [166] & [168].

³ At paragraph [173].

Council memo

- 11 Port Blakely supports the comments made in the Council memo insofar as they recognise the hierarchy that exists between the NES-CF and district plans. The s42A reporting officer shows an awareness in their conclusions that the NES-CF provides a nationally consistent set of provisions that are specifically targeted to the environmental effects of different plantation forestry activities, and that the NES-CF creates both greater certainty for the plantation forestry sector while also 'raising the bar' (or at least maintaining it) in terms of environmental outcomes.
- 12 In particular, Port Blakely supports the following comments made in the Council memo:
- a. comments in relation to plantation forestry in paragraphs 10 to 13;
 - b. suggested amendments to GRUZ-P3 at paragraph 32;
 - c. and their recommendation contained in paragraph 44;

Conclusion

- 13 In summary, in line with Port Blakely's submission on the Proposed Plan to align the to align the Proposed Plan with the NES-CF and remove or amend rules stricter than the NES-CF that do not meet the jurisdiction or justification test of the RMA. Counsel supports the Council memo at paragraph 12 (above), in particular the recognition of the wide range of effects managed by the NES-CF and that it is not necessary to duplicate this and require consent for the same activity within the PDP.

Dated 14 October 2024



Shona Walter
On behalf of Port Blakely Limited