

# Memo



Date	25 March 2019
To	Proposed Marlborough Environment Plan Hearing Panel
From	Liz White
Ref	Topic 22: Forestry – Response to Minute 52 of the Hearing Panel

The Hearing Panel issued Minute 52 on 12 March 2019, requesting my response to three matters. My response is set out below.

## **Matter A - Is any purpose served by inclusion of the phrase *National Environmental Standards for Plantation Forestry 2017* in rule 3.3.6 and other provisions?**

The minute states that amended wording has been recommended for Rule 3.3.6 at paragraph 124 of the original Section 42A Report, to include the phrase “*including where managed by the National Environmental Standards for Plantation Forestry 2017*” in the permitted activity standards for commercial forestry, and questions why the wording of this and other standards needs to have the wording included.

### **Response**

The addition of the wording is not part of the changes recommended through the Section 42A report, rather it reflects the wording as amended through the NESPF Alignment Exercise. As my firm was engaged to undertake the Alignment Exercise, I am able to advise that the wording was added to make it clear that the rule continued to apply to plantation forestry planting activities, *in addition to* the NESPF. This addition was included following feedback from MDC officers, who advised that it was important to identify that the rules would apply, in addition to the NESPF, in order to provide clarity to Plan users. Given the recommendations to amend references within the MEP to “*plantation forestry*” and replicate the definition of plantation forestry from the NESPF within the MEP, the need for this phrase in terms of this particular rule, and other rules that specifically manage plantation forestry activities, may not be necessary. However, in my view, there is benefit in ensuring that it is clear in other rules that apply more broadly, for example 3.1.13 (Cultivation) and 3.1.14 (Excavation), that the rules and standards do continue to apply in addition to the NESPF. However, given the note introduced through the NESPF Alignment Exercise to the standards for these activities, my view is that this is already sufficiently clear, and the phrases included in the rule titles are not necessary. In summary, while I understand the reasons for the addition of this phrase, I do not consider them to be *necessary* and would be comfortable with their removal.

## **Matter B – inconsistency between para 119 to 121 discussion and para 126(b) recommendation**

The minute notes that I have recommended the adoption of the NESPF definitions for each of ‘planting’ and ‘replanting’ as separate activities, but have included in the recommended wording for the definition of planting to include “*replanting commercial forestry*” and queried if this is inconsistent.

### **Response**

My recommendation was to ensure that the definitions within the MEP and those within the NESPF aligned in a broad sense. However, the recommendation did not extend (at that stage) to amending the approach taken in the MEP to having rules that managed both what is “*afforestation*” in the NESPF as well as “*replanting*” within the same rule. As such, in order to continue the management approach, the definition of “*planting*” in the MEP was recommended to continue to apply to both *afforestation* as well as *replanting*.

Notwithstanding this, following various discussions by submitters on this matter, in my reply to evidence, I recommended separating out the management of these two activities (refer pages 2-3). If the Hearing Panel accepts this recommendation, then as a result of this, a consequential change should be made wording for the definition of plantation/commercial forestry planting to remove part (b). The definition would therefore only read as follows:

Means:

(a) planting and growing commercial forestry trees on land where there is no commercial forestry and where commercial forestry harvesting has not occurred within the last 5 years; but does not include vegetation clearance from the land before planting

### **Matter C – Para 52 need for words in parentheses in recommended rule 4.5.3?**

The minute states that the Section 42A report recommends that Rule 4.5.3 (inserted in the alignment exercise as a restricted discretionary activity) be amended to include in parentheses the words “(excluding commercial forestry replanting that meets permitted activity standards)”. The minute queries whether these words serve any purpose, as being a restricted discretionary activity, the matters cannot apply to a permitted activity

#### **Response**

I agree that the words in the restricted discretionary rule cannot apply to permitted activities, and this is not the intended effect of these words. The purpose of the phrase in parentheses was to make it clear that Rule 4.5.3 would not apply to planting (which by the definition recommended at that time, would have included both afforestation and replanting), where such planting was replanting, and met the permitted activity standards in Rule 4.3.6. Without this phrase, the restricted discretionary rule 4.5.3 would have applied to replanting, thus making Rule 4.3.6 redundant. Regardless of this, as identified above, as a consequence of separating out afforestation and replanting, the definition of plantation/commercial forestry planting should also exclude replanting. Therefore Rule 4.5.3 would no longer apply to replanting in any case. If the Hearing Panel agrees with the recommendation to separate these activities, and to subsequently amend the definition, it follows that Rule 4.5.3 should be amended to remove the additional words in parentheses.

However, the rule drafting and definitions recommended at that time meant that Rule 4.5.3 would have also have captured replanting that did not meet the permitted activity standards. If the Hearing Panel agree with the further recommendation in the reply table to separate out the management of replanting and afforestation, and consequentially delete replanting from the definition for planting, Rule 4.5.3 would no longer apply to replanting that does not meet the standards in 4.3.6. Non-compliance with the standards in Rule 4.3.6 would then default to fully discretionary under Rule 4.6.1. In my view, this would extend the Council’s consideration to matters beyond those for which the Council can exercise stringency under the NESPF (i.e. the same for which the NESPF Alignment Exercise amended rules 4.6.3 and 4.6.4 to be restricted discretionary, rather than fully discretionary activities). Therefore, if the Hearing Panel agrees with the other recommendations, it follows that a further consequential change to Rule 4.5.3 would be required, so that it reads as follows:

Plantation forestry planting *or* plantation forestry replanting that is not provided for as a Permitted Activity.